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Congressional Record

PROCEEDINGS AND DEBATES OF THE 100th CONGRESS, FIRST SESSION

SENATE—*Friday, September 18, 1987*

(Legislative day of Thursday, September 17, 1987)

The Senate met at 8:20 a.m., on the expiration of the recess, and was called to order by the Honorable BOB GRAHAM, a Senator from the State of Florida.

The PRESIDING OFFICER. The guest chaplain will deliver the opening prayer.

The guest chaplain today is Rabbi Tzvi H. Porath of Adat Reyim Congregation, Burke, VA.

PRAYER

Rabbi Tzvi H. Porath, Adat Reyim Congregation, Burke, VA, offered the following prayer:

Let us pray:

In a few short days Jews throughout the world will be ushering in Rosh Hashana—their spiritual new year.

The shofar will be sounded preceded by a special prayer for the leadership of the community.

Elohaynu Velohay—Avotaynu.

Our G-d and G-d of our ancestors.

Heyai im Pifiyot Shluchai Amcha.

Inspire the lips of those selected to lead the Nation.

Be with them and all who exercise just and rightful authority.

Enlarge their vision so that they may guide in wisdom and thus make our land a mighty force for righteousness among the nations of the world.

Bind us ever more closely that we may labor unceasingly against the festering vices of malice and greed, fear and ignorance, hypocrisy and corruption, avarice and violence. May this country forever be the land of the free, where all may dwell in security and peace.

Prosper our country, O Lord, in all its worthy endeavors, so that future generations may praise Thee and call us blessed for the spirit of fellowship implanted in the hearts of all Thy children.

Grant that our country lead the way in the pursuit of peace and the fulfillment of the vision of Thy prophet: "Men shall do no evil and work no destruction on all G-d's holy mountain for the earth shall be filled with the knowledge of the Lord, as the waters cover the sea." Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. STENNIS].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 18, 1987.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BOB GRAHAM, a Senator from the State of Florida, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

Mr. GRAHAM thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I yield my 5 minutes to Mr. PROXMIRE. If he has any time remaining, I then yield that remaining time to Mr. DASCHLE.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin.

THE HYPOCRISY OF CHARGES OF POLITICAL PLAGIARISM

Mr. PROXMIRE. Mr. President, the most ridiculous charge that anyone can make against a Presidential candidate is that any plagiarism he might have engaged in is either morally wrong or even unusual. The plain fact, Mr. President, is that virtually every candidate running for President, Democratic or Republican, for many years has been guilty of plagiarism in virtually every sentence of every speech he delivers.

How does Webster's dictionary define plagiarize? Here it is. Listen carefully:

Plagiarize: "To take the ideas, writings, etc., from another and pass them off as one's own."

Now consider that definition in the light of speeches delivered by candidates for the Presidency.

I repeat the definition of plagiarize: "To take the ideas, writings, etc., from another and pass them off as one's own."

Now let me ask: will the Democratic or Republican candidate for the Presidency who has never delivered a speech written by a hired speechwriter, please stand up.

Mr. President, any candidate who says he has never read a speech prepared by his speechwriter and passed it off as his own is something more than a plagiarizer. He is a liar. Indeed, in this body—many of the speeches delivered by Senators on this very floor have not been written by the Senator who delivers the speech. They have at least on occasion been written by his staff. But the Senator delivering the speech always but always passes the speech off as his own. In every significant sense he plagiarizes the ideas—the writing of someone else—usually the staff writer has been bought and paid for by the taxpayer. We all know that. We accept that. The press knows that. Does anyone complain about this widespread, common every day plagiarism? Of course, not. How often do Presidential candidates or Senators identify the real author of the words for which the Senator or the Presidential candidate takes full credit? Again the answer is absolutely never.

So when a Presidential candidate takes the same phrasing word for word from a United Kingdom candidate for Prime Minister, or from a former President or a greatly honored former candidate for President and appropriates them for his own, how does that differ from virtually every speech that

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

has been delivered by virtually every candidate for President in the past 50 years? The only possible exception was Adlai Stevenson who did, indeed, write his own speeches. And they were great speeches. But Adlai was rewarded by being crushed for those magnificent speeches written by himself with two overwhelming defeats. Is there any informed person who thought that the man who defeated him, President Eisenhower, ever wrote one word of any Presidential speech he ever delivered? Of course, not. Like every other President and Presidential candidate except Stevenson, Eisenhower plagiarized virtually every word he ever uttered. Sure the press knew and even identified the speechwriters the persons whose ideas and writings Eisenhower plagiarized. But if there was one word of criticism of Eisenhower for plagiarism, this Senator didn't hear it.

Now, of course, some would argue that it is one thing to deliver a speech written for a candidate by his speechwriter and pass it off as one's own. It's something else to deliver a speech written by another public figure and pass it off as one's own. Is it? What's the difference? The difference is that the original speech which was very likely plagiarized in the first place from some anonymous ghost writer has been identified in the public mind with, say, Robert Kennedy or John Kennedy. Sure the original speech had been written by their speech writers and plagiarized by these highly esteemed men. But it was theirs. It was bought and paid for either by their campaign contributors or the taxpayers. So they didn't originate the speech. But so what? Hadn't they first brought it to public attention? Sure. But does this mean the original plagiarizer is home free? After that any subsequent plagiarizer is a moral leper? Come on. The argument goes that anyone other than the original plagiarizer calling those words to public attention must first identify the original plagiarizer as the real author or he should be pilloried as a thief, a low-down sneak, who takes what isn't his and claims it's his very own.

Mr. President, this is ridiculous. We live in a world of plagiarism, a world in which the ghosts write and the politicians plagiarize with impunity. But why do we retain that ridiculous distinction that if one public figure uses the words of another public figure without attribution, then he is guilty of some kind of moral depravity? Come on. Dumb, maybe—not to give credit to the original plagiarist, but a sin? No way.

Mr. President, I suppose someone might ask, PROXMIRE, how can you make such an incompetent, illogical, and foolish speech, as you have just made? The answer, Mr. President, is easy. This speech wasn't plagiarized. I wrote it myself.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin has yielded the floor.

The Senator from Nevada.

BULLFROG COUNTY

Mr. HECHT. Mr. President, I am here today to correct a grave misunderstanding, a misunderstanding that has escalated the movement toward Nevada as the site for the Nation's first high-level nuclear waste repository.

This misunderstanding has been caused by the regrettable creation of a county in Nevada called Bullfrog County. This county, and the unfortunate impression it promotes, are the result of a last-minute effort by Nevada's Governor and State legislature at the end of the last legislative session.

Bullfrog County was designed to be a clever ploy to siphon any extra benefits caused by a potential site at Yucca Mountain away from Nye County and into the hands of the legislature and Governor.

Like most hasty, last minute, clever ploys, the creation of Bullfrog County was ill-conceived, ill-timed and has been totally misunderstood.

Instead of accomplishing its original objective, the creation of Bullfrog County has been looked on as an open invitation, issued to the Federal Government by Nevada, for the waste repository site.

The Los Angeles Times recently ran a story under the headline "Empty County to Croak Unless it Goes to Waste," which says that "Governor Richard Bryan signed the bill making the Bizarre County a political reality," and called Bullfrog County "one of the strangest political subdivisions ever created."

The Washington Post has called Bullfrog County simply an attempt "to get the maximum amount of money out of a proposed Federal high-level nuclear-waste dump at Yucca Mountain."

The New York Times said the creation of Bullfrog County is "a not-in-my-backyard issue that some say has become an embarrassment to Nevada."

There is a growing consenus here in Washington that Nevada has surrendered the fight and by creating Bullfrog County the people of Nevada are ready to accept the Nation's nuclear garbage.

Mr. President, nothing could be further from the truth.

I have just completed my fifth annual "Chat With Chic" tour of Nevada. I traveled through every county—including Bullfrog, in spite of the fact that no one lives there. I talked to many Nevadans about their problems and concerns.

On this trip, two things came through to me loud and clear:

First. The people of Nevada are not ready to give up the fight and accept Nevada as the inevitable site for a nuclear waste dump site.

Second. The creation of Bullfrog County was a mistake because it is being interpreted as an open invitation.

I am here today to correct that misconception. Bullfrog County is not an invitation, it is an ill-conceived mistake. I am hopeful that the Governor of Nevada and the legislature will destroy Bullfrog County or that the courts will find it unconstitutional.

One of the worst aspects of this tragic mistake was that the affected citizens were never consulted. The citizens of Nye County, from whom the land was stolen, feel it sends the wrong signal to Washington. In a letter to Governor Bryan, the Nye County commissioners ask:

> How can Nevada's nuclear waste repository concerns be taken seriously on Capitol Hill in light of Bullfrog County? Bullfrog County may have sealed Nevada's fate with the repository.

In the letter, which I will insert into the RECORD at the conclusion of my remarks, the commissioners ask that Governor Bryan call a special session of the legislature to repeal the law creating the county, and inform the Governor of their plans to sue over the matter. For Nevada's sake, I hope the Governor changes his mind and grants this reasonable request.

I favor a more rational, more reasonable, less confusing approach.

When S. 1668 came before my committee, I offered amendments that will protect Nevada, or any State that is forced to accept the dumpsite. I added language specifically requested by the Nevada State Legislature. The 12 amendments I sponsored will:

First. Require a study of feasibility of reprocessing spent fuel of different vintages, due September 30, 1989.

Second. Require that nuclear waste packages be licensed by Nuclear Regulatory ommission [NRC].

Third. Require the Department of Energy [DOE] to abide by NRC rules for notifying States before waste is shipped.

Fourth. Require DOE to provide Federal money and assistance to train State and local agencies involved with waste transportation.

Fifth. Require that waste package prototypes be submitted to actual tests, not just to computer simulated tests.

Sixth. Require NRC to examine other nations' waste packages to see if any are safer than what we plan to use.

Seventh. Require DOE to pay for onsite State oversight, for quality con-

trol of site characterization and repository construction.

Eighth. Require DOE to consult with the Department of Defense [DOD] and certify that a repository site to be named by the President would not jeopardize national defense activities nearby.

Ninth. Require a study of the advantages of future research on subseabed disposal.

Tenth. Require DOE to comment on the financial implications of Nevada State Legislature's joint resolution calling for compensation for a State forced to host a repository.

Eleventh. Require that a State that gets stuck with a repository receive special consideration for other DOE research contracts.

Twelfth. Require a study of the advantages of 50 year storage of waste before moving waste to a repository, allowing for public comment, and specifically analyzing the long-term storage practices of other countries.

Mr. President, even though I was successful in attaching these safeguarding amendments to the legislation, I still firmly opposed its passage and voted against it, because I feel the approach unfairly targets Nevada. I knew, however, that by itself, my opposition would not be enough. Nevada had to be protected whether the bill passed or not.

When the final legislation comes to the Senate I will speak against it, vote against it, and do everything I can to stop it—and to protect Nevada in case it passes over my objections. That's the job of a Senator.

Mr. President, I plan to send a letter outlining my remarks today to every Member of Congress, to set the record straight in light of this confusing signal from Carson City.

Despite the unfortunate creation of Bullfrog County, the people of Nevada do not want the nuclear waste repository and I will do everything I can to see that this legislation does not pass.

I ask unanimous consent that the letter, from the commissioners to Governor Bryan to which I referred earlier, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NYE COUNTY, NV,
August 5, 1987.

Re Bullfrog County.
Hon. RICHARD BRYAN,
Governor of Nevada,
Executive Chamber,
Carson City, NV.

DEAR GOVERNOR BRYAN: I am writing you this letter on behalf of the members of the Nye County Board of County Commissioners. The Board decided at its August 5 meeting to place on paper for your consideration its thoughts and concerns relative to the creation and operation of Bullfrog County. We hope you can set aside a few minutes of your valuable time to hear us out.

At the outset we wish the subject of this letter was a positive topic. But Bullfrog County is not a positive topic, and its creation has made Nevada an object of ridicule and the butt of uncomplimentary jokes throughout the nation. Many proud Nevadans have stated publicly they are personally offended by the motives and existence of Bullfrog County. Nevadans like yourself have worked long and hard to create a positive image for Nevada, nationally and internationally. Unfortunately, the motives for Bullfrog County and the manner in which it was created have diminished Nevada's standing or respect in board rooms, committee hearings and at dinner tables across the nation. How can Nevada's nuclear waste repository concerns and arguments be taken seriously on Capitol Hill in light of Bullfrog County? Bullfrog County may have sealed Nevada's fate with the repository.

We realize the Bullfrog County law will not be legislatively repealed unless there is a large public outcry against this artificial county or you and Nevada legislators decide to repeal it independent of public pressure. We sense there will be a large public outcry in Nevada if Bullfrog County continues to be a source of national embarassment or it cost Nevada taxpayers a considerable amount of money to address the problems associated with Bullfrog County.

Another avenue that one may follow to rid the State of Bullfrog County is to challenge the law that created it. Nye County requested a legal opinion on the constitutionality of the Bullfrog County law from two distinguished attorneys, Mr. Russell W. McDonald and Mr. Rex A. Jemison. As you know these attorneys are very familiar with the application of the Nevada Constitution. Both of their opinions state the Bullfrog County law violates the Nevada Constitution in a number of obvious area (e.g., Article 4, Sections 20, 21, 25 and 26). Based on these opinions and the opinions of other attorneys, the Nye County Board of County Commissioners instructed the Nye County District Attorney, Mr. Philip Dunleavy, to prepare a lawsuit challenging the constitutionality of the Bullfrog County law.

We believe District Court Judge William P. Beko's July 17, 1987, letter to you clearly states there are constitutional problems with the Bullfrog County law. But of more urgent concern to us is the Judge's statement that there are serious law enforcement problems associated with Bullfrog County. Bullfrog County does not have a sheriff, a justice of the peace, a district court and citizens to serve on a required jury. In essence, Bullfrog County is a haven for lawbreakrs and anarchy. If Nevada Test Site protestcrs or common criminals locate or flee to Bullfrog County you will probably have to call out the Nevada National Guard, at a significant expense to Nevada taxpayers, to bring law and order to the County. It is anybody's guess as to what you do with the lawbreakers after the Guard arrests them. We hope the fathers of Bullfrog County, State Senator Tom Hickey and State Assemblyman Paul May, can set our minds at ease and tell us the Judge's concerns are baseless.

Given the aforementioned legal problems and Nevada's national black eye, we suggest you call a special one-day session of the Nevada Legislature for the purpose of repealing the Bullfrog County law; the alternative could cause Nevadans, particularly the lawmakers who created Bullfrog County, considerable hardships in the weeks and months ahead. We think the time is right for political courage.

Respectfully,

JOE S. GARCIA, Jr.,
Nye County Commission Chairman.

Mr. BYRD. Mr. President, how much time remains from my time?

The ACTING PRESIDENT pro tempore. One minute and 42 seconds.

Mr. BYRD. I yield to the distinguished Senator from South Dakota. He needs an additional 3 minutes and I ask that he be given an additional 3 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DASCHLE. I thank the majority leader.

AGENT ORANGE

Mr. DASCHLE. Mr. President, in the last few days the Center for Disease Control has come to the conclusion that a study on the effects of agent orange on troops in Vietnam, which we mandated in 1979, could not be accomplished. They cited as their reason that enough veterans who were exposed to agent orange could not be located.

After spending more than $60 million and 8 years, this annoucement is nothing short of incredible. It confirms what I have suspected all along: the CDC did not want to do the study in 1979, it has not wanted to do the study for 8 years, and it does not want to do it now.

It is probably no coincidence that when the CDC made this announcement, an undated report from within the Veterans' Administration was leaked to the press. Veterans who were marines in Vietnam, according to this report, had a 110-percent higher death rate from non-Hodgkin's lymphoma and a 50-percent higher death rate from lung cancer. It indicated that there may be a link between exposure to agent orange and these and other diseases.

Conflicting evidence and continued controversy is nothing new to this issue. This latest round should be a surprise to no one.

I must say that in my 9 years in Congress on all of the issues that I have addressed, nothing has been more frustrating than my experiences in the effort to resolve the agent orange issue.

For nearly a decade, the overwhelming scientific data has concluded that agent orange has detrimentally affected veterans who served in Vietnam. In hundreds of laboratory tests, the results have indicated that through agent orange, dioxin kills laboratory animals. And we have argued that if it kills laboratory animals, it kills people, too.

But lacking universal, unequivocal, unanimity on the effects of dioxin, we

have said simply that the only thing to do is to give those veterans exposed to agent orange and who are now having health problems the benefit of the doubt. We have done so in 40 other diseases within the VA benefit structure. At the very least, we ought to do it for agent orange victims, too.

In the reasonable goal, we have been thwarted at every step. And the sad thing is the Vietnam veterans themselves are the victims. They have been totally frustrated by the Government's inability to own up to the damage it has done.

What is incredible to me is that, after 20 years of delay, the VA Administrator, just last week, was urging that we even have further delay in addressing this issue. We cannot be hurried, he says. Incredibly, he is reported as saying: "No one is more committed than I am in addressing concerns about agent orange."

If that is the case, where is the proof? Why has not the VA expanded the list of compenstable diseases? Why have they not at least added non-Hodgkin's lymphoma as a disease related to exposure?

Why has not the VA advisory committee been made to respond more quickly to the dearth of scientific data already available on dioxin?

How can anyone in the VA responsible for this gross neglect now talk about commitment?

The enthusiasm we shared 8 years ago that at long last the needs of agent orange victims would be met is gone. For 8 years we have had nothing but mumbo-jumbo excuses, delays, and outright distortion at each and every turn—from the Centers for Disease Control, from the Veterans' Administration, from administration on both sides of the aisle.

There is no reason for these delays and conflicting messages. We now have blood serum tests to verify exposure. It is the most reliable method yet in detecting exposure. States, especially New Jersey, have done a tremendous job in bringing about new scientific evidence and data to this effect.

So it is imperative, Mr. President, that we confront the issue once more at the national level. The VA advisory committee has the power to add innumerable diseases right now. We need to conclude the question of who was exposed right now. We need to assess the half life of dioxin and determine its effect on ongoing studies right now. We need to establish a national system of achieving blood and tissue samples for Vietnam veterans who may have been exposed—and we should do that right now.

Finally, we need to craft a compensation package which, at long last, meets the needs of victims of exposure to agent orange. It is my sincere hope that we can do that, too, right now.

Working with the Vietnam veterans in Congress, the Veterans' Committee and others, let us resolve this issue during the 100th Congress.

In the near future, I will be introducing legislation which I believe will address, once again, the compensation needs of veterans expand to agent orange. I intend to work with the chairman of our Committee on Veterans' Affairs in the hope this bill will merit his support and that of other members of the committee.

My hope is that, after all these years, the Government, once and for all, will demonstrate its commitment and fulfill its responsibilities to the thousands who continue to wait. We can wait no longer.

I thank the Chair and I thank the majority leader for yielding me this time.

BICENTENNIAL MINUTE

SEPTEMBER 18, 1793: GEORGE WASHINGTON PLACES CAPITOL CORNERSTONE

Mr. DOLE. Mr. President, 194 years ago today, on September 18, 1793, a large and boisterous crowd jostled around President George Washington as he placed the cornerstone of the Capitol Building. When Pierre Charles L'Enfant laid out the new Federal City, he had saved the choice rise of land, known locally as "Jenkins' Hill," expressly for the Congress' home. It stood he claimed, "As a pedestal waiting for a monument." Choosing the right "monument" to crown this pedestal, however, proved difficult. None of the first designs was satisfactory, and some were downright ludicrous. Then, at the last minute, William Thornton, a physician and amateur architect, asked permission to submit a design. When it arrived, another amateur architect, Secretary of State Thomas Jefferson, claimed with relief, "it captivated the eyes and judgment of all."

Work on the new Capitol began immediately. By September 18, 1793, all was in readiness for the cornerstone to be laid. Festivities began with a grand parade. With drums beating and flags flying, brightly uniformed members of the "Alexandria Volunteer Artillery" and local Masonic lodges escorted President Washington across the Potomac, into the District, and up to the top of Capitol Hill. Dating from the middle ages when stonemasons and the Masonic order were closely associated, Masonic rituals dominated the ceremonies. President Washington laid the cornerstone wearing a Masonic apron, reportedly made by the wife of General Lafayette. Using a silver trowel and a marble-headed gavel to put the stone in place, he then attached to it a silver plate proclaiming the date to be the 13th year after American independence, the first year of his second term, and the year 5793 of Masonry.

After 15 salutes from the artillery, the Alexandria Gazette reported that "the whole company retired to an extensive booth, where an ox of 500 pounds' weight was barbequed, of which the company generally partook."

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1988 AND 1989

The ACTING PRESIDENT pro tempore. Under the previous order, the hour of 8:30 having arrived, the Senate will now resume consideration of the unfinished business, S. 1174, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1174) to authorize appropriations for fiscal years 1988 and 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal years for the Armed Forces, and for other purposes,

The Senate resumed consideration of the bill.

CALL OF THE ROLL

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The absence of a quorum having been suggested, the clerk will call the roll.

The assistant legislative clerk called the roll, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 22]

Armstrong	Dole	Leahy
Bingaman	Graham	Proxmire
Boschwitz	Hecht	Specter
Byrd	Helms	Stennis
Daschle	Karnes	

The ACTING PRESIDENT pro tempore. A quorum is not present.

Mr. BYRD. Mr. President, I move that the Sergeant at Arms be instructed to request the attendance of absent Senators, and I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. The yeas and nays have been requested.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from West Virginia [Mr. BYRD]. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Delaware [Mr. BIDEN], the Senator from Iowa [Mr. HARKIN], the Senator from Hawaii [Mr. INOUYE], the Senator from Mon-

tana [Mr. MELCHER], the Senator from Maryland [Ms. MIKULSKI], the Senator from Alabama [Mr. SHELBY], the Senator from Illinois [Mr. SIMON], and the Senator from Oklahoma [Mr. BOREN] are necessarily absent.

I further announce that the Senator from North Carolina [Mr. SANFORD] and the Senator from Connecticut [Mr. DODD] are absent on official business.

I also announce that the Senator from New Jersey [Mr. LAUTENBERG] is absent because of death in family.

Mr. SIMPSON. I announce that the Senator from Mississippi [Mr. COCHRAN], the Senator from Maine [Mr. COHEN], the Senator from New Mexico [Mr. DOMENICI], the Senator from Texas [Mr. GRAMM], the Senator from Kansas [Mrs. KASSEBAUM] and the Senator from Idaho [Mr. MCCLURE] are necessarily absent.

I also announce that the Senator from Arizona [Mr. MCCAIN] and the Senator from Vermont [Mr. STAFFORD] are absent on official business.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 73, nays 8, as follows:

[Rollcall Vote No. 255 Leg.]

YEAS—73

Adams	Glenn	Nickles
Armstrong	Gore	Nunn
Baucus	Graham	Packwood
Bentsen	Grassley	Pell
Bingaman	Hatch	Pressler
Boschwitz	Hatfield	Proxmire
Bradley	Hecht	Pryor
Breaux	Heflin	Reid
Bumpers	Heinz	Riegle
Burdick	Helms	Rockefeller
Byrd	Hollings	Roth
Chafee	Humphrey	Rudman
Chiles	Johnston	Sarbanes
Conrad	Karnes	Sasser
Cranston	Kasten	Simpson
Danforth	Kennedy	Specter
Daschle	Kerry	Stennis
DeConcini	Leahy	Symms
Dixon	Levin	Thurmond
Dole	Lugar	Trible
Durenberger	Matsunaga	Warner
Exon	McConnell	Wilson
Ford	Metzenbaum	Wirth
Fowler	Mitchell	
Garn	Moynihan	

NAYS—8

Bond	Murkowski	Wallop
D'Amato	Quayle	Weicker
Evans	Stevens	

NOT VOTING—19

Biden	Harkin	Mikulski
Boren	Inouye	Sanford
Cochran	Kassebaum	Shelby
Cohen	Lautenberg	Simon
Dodd	McCain	Stafford
Domenici	McClure	
Gramm	Melcher	

So the motion was agreed to.

The ACTING PRESIDENT pro tempore. With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

Mr. MOYNIHAN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, we read in this morning's press a number of discussions of quotation and citation in public discourse, much of it centering on recent speeches by our much admired and senior, though a still youthful, colleague from Delaware.

The Senator speaks for himself, and speaks so well as to have no need to exposition from such as I. Still, it may be of some use to the Senate to note how everyday a matter it is for public men to appropriate one another's thoughts as they seem appropriate, and also to note a darker warning about the toll taken on American political leaders by our current processes.

In this first matter, I would simply read a passage from the fine biography of the English statesman Benjamin Disraeli, written by Sara Bradford. The year is 1852. The future Prime Minister has just achieved his first high office, that of Chancellor of the Exchequer in the government of Lord Derby.

> The principal topic of 1852, young Stanley wrote in his diary, was the hunting-down of the Protectionist government, and the particular game of the winter of 1852 would be the hunting-down of the Chancellor. Disraeli planned to meet his opponents head-on, and soon, before the elements of opposition to him could coalesce, by presenting his Budget before Christmas. Unfortunately for him, fears that Louis Napoleon, who had declared himself Emperor on 2 December, would emulate his uncle and invade England, caused a clamour for huge expenditure on defence, and destroyed Disraeli's plans to conciliate every interest by tax remissions. Disraeli's position was an unenviable one, with, behind him the suspicious Protectionists typified by the Duke of Richmond who had predicted that the Government would not last three weeks—'I can see they are, damn them! at the old game of throwing over their principles!'[6]—and in front of him Russell and the Whigs, longing for office again, aided by the Peelites who had resolved to avenge their dead leader.
>
> Indeed the omens at the outset of the session in which the crucial battle was to take place were not encouraging. The Duke of Wellington had died at Walmer in September. On the day of his State Funeral at St. Paul's Disraeli delivered the eulogy on behalf of the Government in the Commons; to the delight of his enemies it was discovered that a part of his speech had been borrowed from a similar oration by Thiers on the death of Marshal Gouvion Saint-Cyr. A storm of execration and accusations of plagiarism descended upon Disraeli's head, expressed with particular vindictiveness by the *Globe:* 'We have seen him [Disraeli] snatch a wreath of faded French artificial flowers for the pall of Wellington, with an audacity of larceny unsurpassed in Grub Street'. Disraeli's enemies in the literary set were especially venomous; on 22 November *The Times* berated them as a 'whole pack of jealous litterateurs', wondering whether it was worth their while 'to be flinging as much dirt as they can on the only litterateur who has ever yet succeeded in breaking that solid aristocratical phalanx which has hitherto monopolised the high offices of state'. Disraeli could only defend himself by saying, which was at least partly true, that he had been struck by the passage long ago, had written it down, and, coming upon it, had thought it was his own composition. The most likely explanation would seem to be that, pressed with business and faced with the necessity of delivering the oration, Disraeli had hurriedly searched through his notes for suitable material and had used the passage without remembering or, perhaps caring, where it had come from. It was a storm in a teacup, but Disraeli was greatly upset by it: 'I can bear a great reverse', he told Stanley, 'but these petty personal vexations throw one off one's balance.'

Would the Senate not agree that the Times showed a notable understanding of the pressures and distractions a young man might experience in office or in quest of office?

But to a graver matter. From talking about this matter in town meetings in New York State, I have the impression that many of us do not know just how recently the Presidential campaign has become part of our politics. It dates, quite literally, from 1896 when, for good or ill, William Jennings Bryan discovered the rear platform of the railroad train and after receiving the Democratic nomination instead of going home and peaceably awaiting the calm judgment of the voters, as any respectable candidate would do, instead jumped aboard and started barnstorming across the land, and especially, of course, the prairies.

At first the response was moderate. Mark Hanna devised a "front porch campaign" for William McKinley, allowing voters to come and see him in his home in Ohio. But next in Presidential succession came Teddy Roosevelt, and there has been no rest since.

Woodrow Wilson, still a professor of government, watched this begin and had forebodings. No normal man, he wrote, could endure the strain. If this manner of campaigning should continue, he continued—and here I rely on memory—"we shall be reduced to choosing our chief magistrates from among wise and prudent athletes, a small class."

Foreboding indeed. As we know, some two decades later Wilson himself died, or as near as makes no matter, on the rear platform of a railroad train, campaigning for the Treaty of Versailles.

The strain is yet greater today. Do Americans really think they can be so casual with their political system?

We would do well on the day after the 200th anniversary of the Constitution to remember that the framers did not anticipate the rise of political parties. Those that sensed the possibility feared it. They fully expected the President to be chosen in the House of Representatives, and the Presidential campaign to be conducted in lobbies. It is not that they lacked energy:

those men founded a nation. It is rather, today, that we are running out of common sense. Do not be surprised then if we run out of viable Presidential candidates and turn instead to television.

Mr. President, I yield the floor.

Mr. BUMPERS addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Arkansas is recognized.

AMENDMENT NO. 697

(Purpose: To apply the provisions of the War Powers Resolution to the imminent danger zone designated by the Secretary of Defense)

Mr. BUMPERS. Mr. President, I was waiting for my colleague from Oregon, Senator HATFIELD, who apparently has just left the floor. We have an amendment that we want to get up here. He was going to offer the amendment.

Maybe we could have someone check to see if Senator HATFIELD is just off the floor. He wanted to offer the amendment. I want him to. I do not want to delay the Senate, however.

Mr. EXON addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Arkansas has the floor.

Mr. EXON. Will the Senator yield for a question?

Mr. BUMPERS. I will be happy to yield.

Mr. EXON. May I suggest this? Here we are on Friday getting off to a 12-minute late start. I am wondering if my friend from Arkansas, since he knows full well what the amendment is, which is going to be offered by the Senator from Oregon, could not begin the debate on this because I know I would like to listen to what he has to say. Can we move along? That is what I am asking.

Mr. BUMPERS. Mr. President, the Senator from Oregon is on the floor and will immediately send the amendment to the desk. We are on our way.

Mr. President, I yield the floor.

Mr. HATFIELD addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Oregon is recognized.

Mr. HATFIELD. Mr. President, I send an amendment to the desk on behalf of the Senator from Arkansas [Mr. BUMPERS], the Senator from Washington [Mr. ADAMS], and the Senator from Alaska [Mr. MURKOWSKI], and I ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. HATFIELD], for himself, and Mr. BUMPERS, Mr. ADAMS, and Mr. MURKOWSKI, proposes an amendment numbered 697.

Mr. HATFIELD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 114, between lines 13 and 14, insert the following new section:

SEC. . Notwithstanding any other provision of law, the War Powers Resolution shall be deemed to apply beginning 48 hours after the designation of the imminent danger zone on August 25, 1987, and the use of United States Armed Forces in such zone, as if the report pursuant to section 4(a) of that Resolution had been transmitted within such period.

AMENDMENT NO. 698

Mr. ADAMS. Mr. President, I send a perfecting amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. ADAMS], proposes an amendment numbered 698 to amendment No. 697.

Mr. ADAMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On Page 1, strike all after "SEC" and insert the following new Section:

SEC. . Notwithstanding any other provision of law, the requirement for the transmittal to the Congress of the report described in section 4(a)(1) of the War Powers Resolution shall be deemed to apply to the escort, protection, or defense of any vessel which has been reregistered under the United States flag and which as of June 1, 1987 was owned by the government or nationals of any country bordering the Persian Gulf. Furthermore, in the event that such report is not so transmitted, the provisions of the War Powers Resolution shall be deemed to apply, beginning 48 hours after enactment of this Act as if that report were transmitted within such period, unless such reregistered vessels have been further reregistered under the flag of a country other than the United States.

Mr. HATFIELD addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Oregon is recognized.

Mr. HATFIELD. Mr. President, briefly, this particular amendment that I offer at this time to the defense authorization bill has to do with the subject of the War Powers Act that this Congress passed a number of years ago.

Mr. President, James Madison wrote in 1887:

Those who are to conduct a war cannot in the nature of things be proper or safe judges of whether a war ought to be commenced, continued or concluded. They are barred from the later functions by a great principle in free government, analogous to that which separates the sword from the purse, or the power of executing from the power of enacting laws.

Almost 200 years after Madison penned his eloquent words, this Congress enacted the war powers resolution.

The war powers resolution was written precisely because we had allowed the principle Madison championed to slip away. It was written because those who conduct war had become those who judge the wisdom of war.

It was written, Mr. President, because we had allowed the President to usurp our rights—our responsibilities.

We had allowed the President—indeed, several Presidents—to drag our sons into a bloody war without even so much as a vote in this body. And the blood of that distant war had spilled over onto us, Mr. President.

We wanted to make sure that never happened again. So we put into law the principle Madison championed: When the President sends United Armed Forces to face hostile fire, he must notify us.

And in 60 days, we must act. We must declare war, pull the troops out, or authorize an extention of the policy. But whatever we do, Mr. President, we must examine the policy.

We must ask the President why he sent the troops into the midst of hostile fire. We must ask the President how they are going to respond to that fire. We must ask the President what the risks of the policy are. And we must ask the President when our troops are going to be removed.

The one thing we do not have to ask the President is who is responsible for this policy. That is the point: Mr. President, we are all responsible for this policy—the President and the Congress.

Of course the President did not much like the war powers resolution. In fact, he vetoed it. But we overrode his veto, and it became the law of the land.

James Madison would have been proud of us on that day, that day in 1973 when we passed the war powers resolution over a Presidential veto.

He would not, however, be so proud of us on this day, this day in 1987 when we stand idly by and watch the President ignore the law of this land.

There are more than 10,000 troops and 41 naval ships facing hostile fire in and around the Persian Gulf right now.

More than 40 of our sons have died in the region this summer, and Iranian mines have become almost routine. Shipping in the gulf is under almost constant attack and our Navy is under orders to defend itself against even the threat of hostile fire.

And on August 26, the Secretary of Defense went so far as to designate the Persian Gulf and part of the Gulf of Oman an "imminent danger area," entitling our troops serving there to

additional "imminent danger pay" of $110 a month.

But still the administration insists the war powers resolution does not apply.

Still the administration insists, as Assistant Secretary of State Richard Murphy explained last spring:

> The naval protection accorded by United States naval vessels to these United States flag tankers transiting international waters or straits does not constitute introduction of or Armed Forces into a situation where "imminent involvement in hostilities is clearly indicated."

Does the administration really expect us to believe that a policy based on the assumption that the Iranian will to survive is stronger than the Iranian will to martyrdom does not clearly risk imminent hostilties?

Just look at the Iranian record.

It makes me wonder what would constitute "the introduction of our Armed Forces into a situation where 'imminent involvement in hostilities is clearly indicated.' "

Mr. President, I happen to think this policy ill-conceived from the beginning. And I am convinced that the risks inherent in the policy far outweigh any potential benefits.

But it is current U.S. policy. And whether we are willing to address it or not, it is a policy we are funding to the tune of $1 million a day.

When is it going to end? When the Iran-Iraq war ends? And how many more troops are we going to send in? 20,000? 30,000?

The truth is that we are footing the bill for a policy we know virtually nothing about.

I do not want to fool anybody. Even if we were to invoke the war powers resolution, I do not think we will have the courage to terminate the policy in 60 days demonstrated by our current record.

In truth, I would have ambivalence about that decision. Not because I think it is a good policy—I have already explained that I think it is a disasterous policy. But because of our own inaction earlier this summer, we have allowed the administration to put us in a box.

There is little room left for face saving, no way to gracefully bow out.

That is no secret, Mr. President. In fact, I think it is the major reason we have been unwilling thus far to take a position on this issue, on the applicability of the war powers resolution to this situation.

Once the war powers resolution is invoked, we are implicated. It is going to be our policy, too.

The problem is that we all know this is a lose/lose proposition. And we just do not want to get involved. It may be a bad policy, but at least our fingerprints are not on it.

Well, Mr. President, the law requires that our fingerprints go on the policy.

If we did not want to be put in this position, we should have said so before the policy was implemented. Senator PELL introduced a bill to stop the reflagging arrangement before it started, and Senator BUMPERS and I proposed an amendment to delay its implementation for 90 days.

The Senate had its chance to avoid this situation, but we ignored it.

Mr. President, the war powers resolution now requires us to get involved in the policy. If we are not going to do that, we might just as well repeal the war powers resolution and relegate James Madison and the rest of our Founding Fathers to the forgotten shelves of history.

It all comes down to this, Mr. President: This charade has gone on long enough. The war powers resolution is the law of the land.

Whatever your opinion of the overall policy, no one in this Chamber can tell me that imminent involvement in hostilities is not clearly indicated.

And no one can tell me that the war powers resolution does not apply.

It does, and we have a responsibility—to the Constitution, to the people we represent, and ultimately to ourselves—to say so.

I am proud to join my colleagues from Arkansas, Washington, and Alaska in introducing this resolution at this time.

Mr. ADAMS. Mr. President, I thank my colleague from Oregon for his fine opening statement on this amendment, and my friend the Senator from Arkansas and my friend the Senator from Alaska, in all joining together for this important debate.

Mr. President, over the last few days and the last few months, the Senate, quite properly, has been debating the controversial role of interpreting treaties. Now, however, we are going to discuss and debate something that really cannot be debated, in the sense of raising a question of congressional powers. Congress must accept the powers which the Constitution has so clearly designated that Congress exercised. Congress must exercise, by law, policies which place our troops into the midst of imminent hostilities.

Before I turn to the specifics of this amendment, let me indicate that I think it is supremely important that we debate this amendment this week, which is the week we celebrate the 200th anniversary of the Constitution. I think it is obvious from all that has been stated this week and all that will be stated during the week that ours is a system of checks and balances.

The mandate of the 18th century was that we do not have a king, we do not have a monarch, we do not have an Executive that exercises the traditional 18th century powers of placing a country into a status of war or moves troops into imminent hostilities to create a war.

The War Powers Act, which we now seek to have enacted by this amendment and to invoke, in the 20th century's translation of the 18th century mandate regarding who shall declare war and who shall have and exercise the war power. It is a contemporary characterization of an explicit, and I might say an essential, authority which the Framers of the Constitution gave to Congress. The President's authority as Commander in Chief and the responsibilities of Congress under the Constitution to declare war are clearly expressed not only in the specific words of the Constitution but also in the Federalist Papers.

Mr. President, Alexander Hamilton, who often argued for stronger powers for the Executive, expressed the intent of the Framers of the Constitution on this issue very clearly in Federalist 69, where Hamilton wrote:

> The President is to be the Commander in Chief of the Army and Navy of the United States. In this respect, his authority would be nominally the same with that of the King of Great Britain, but in this instance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces as the first general and the admiral of the confederacy, while that of the British king extends to the declaring of war and to the raising and regulating of fleets and armies, all of which, by the Constitution under consideration, would appertain to the legislature.

Hamilton stated it clearly. It was the subject of debate; but it was the subject of no debate, once the Constitution was presented for signature, that the Constitution gave the power to declare war, to marshal troops, to place the Treasury of the United States at the command of the Executive. That power was reserved to the legislature—in this case, to Congress—and for a very specific reason. The Framers did not want to have another king in the United States. They did not want a President to have the power to place the Nation in a state of war.

The War Powers Act is a portion of this power. It is a manner duly passed by both the House and the Senate, passed over the Presidential veto, that enables Congress to place itself in a position to respond to the President's request for building or escalating a situation that leads to acts of war and a declaration of war, or a refusal to declare war.

This is not a situation of the Congress of the United States, particularly the U.S. Senate, trying to micromanage a war or to tell a President specifically how to conduct an operation that would be of short term, which he might do as Commander in Chief, which goes all the way back to the time of Tripoli and through our history. Instead, this is the Congress of the United States saying that a statute has been implemented and this statute

should be operable at this moment in time, and we are trying to unite this country behind a policy that is agreed upon by the President and the U.S. Congress and the people for placing our service people into an area of imminent hostilities.

(Mr. BREAUX assumed the chair.)

Mr. ADAMS. I cannot believe that there is anyone in the Senate of the United States who does not believe that our troops and our sailors who are in the Persian Gulf are in an area of imminent hostilities. We suffered casualties before any of this started just by being there. We have had the situation of one of our ships being conveyed, having to fall behind the ship it was convoying, a Kuwaiti ship, which we wrongly put our flag on, striking a mine.

In a moment I will refer to what the captain of that ship said with regard to that mine:

> If our frigate had hit that ship instead of it being hit by a 200,000-ton oil tanker which could have absorbed the blow of that mine . . .

This is just the right day for this debate, Mr. President. This is the right bill. After all, the Department of Defense authorizes spending on specific weapons systems and defense activities. It seems absurd for us to spend our time debating what we will buy without considering the ways and the places and the means where we will spend this money.

Where will we spend what we purchase? What will be lost? What is our commitment? How deep will it be? How many ships, how much operation and maintenance, how many personnel do we have to have?

The amendment, Mr. President, that we offer today, and it is a bipartisan amendment, is both simple in detail and sound in design.

It grows out of the historic Vietnam era when in the 1970's the Congress hesitated again and hesitated again until finally we had disastrous divisions within the United States which an undeclared war was creating in American life.

I say an undelcared war, Mr. President, because I was in the Congress of the United States when that started with the landing of the troops at Da Nang; I was in the Congress after the Gulf of Tonkin resolution, but before our commitment.

Mr. President, I have a horror of repeating step by step what we did as a nation then. For years in the Congress of the United States I listened to the executive branch, and it was not a Republican legislative branch. A legislative branch described this as a conflict, a police action, and assistance, everything except a war. But we were landing divisions. We were transferring enormous amounts of equipment. We spent billions of dollars. In fact, to this day we are paying for the fact that we did not say we were in a state of war and to finance that war. It started the inflation of the 1970's because we had not taken in the money. We pleaded with the President, many of us in Congress at that time, to put on a war tax. That President said, "I will not call this any war tax." But if that was not a war in Vietnam, I do not know what a war is, and I do not know what the Framers of the Constitution were talking about when they said declare war.

Mr. President, what concerns me about this is that we are starting down the same trail, and the reflagging started it. I am not arguing here the merits of being in or out of the Persian Gulf. As a superpower we have been there for 40 years. In my opinion we will probably be there 40 years more. That is not the question. The question was the reflagging of these ships, then the convoy protection of these ships, then the instructions to fire even before fired upon if shown to be in danger, then the granting of the imminent hostility pay. Everything says we are proceeding down the track to war and that is what the War Powers Act was meant to address. We passed it over the President's objection.

I wish we did not have to be here today. I wish the President would simply follow the statute. I hope in the lawsuit which has been filed which says the act is in force the court will state that. But I do not think that removes our responsbility as Senators to address the question and to address it strongly and to answer it, that we are a sovereign Nation, we are a sovereign branch of that Nation, and we have a responsibility to state that this Nation is moving toward war, that we have met all the tests of the statute that was passed out of a undeclared war and, therefore, let us unite this Nation and let us unite this Congress with the administration into a policy that tells us precisely what we are going to do and we will be part of it.

This act was designed, was specifically designed to carry out the constitutional mandate to keep a President ever again from unilaterally placing us in hostilities. It required the President where possible to consult with the Congress prior to introducing American forces into a situation involving imminent hostilities. That was not done in this case. But it says if such consultation is not possible, the law requires the President to notify the Congress within 48 hours that American forces have been introduced "into hostilites or into situations where imminent involvement in hostilities is clearly indicated."

If we are not in a situation where imminent involvement in hostilities is clearly indicated due primarily to this reflagging operation and to the convoying and to the instructions given to those convoying ships, I do not know that we will ever have a situation where we are in or about to be involved in imminent hostilities.

The Congress under this statute, Mr. President, does not automatically then do something to or for the President. What it does is it says that the President has 60 days and during that period of time has to convince the Congress to authorize the action.

It very well may be that the President could come to the Congress of the United States and the Congress would authorize a particular action.

But if that is not done, this is the precise constitutionality of this statute. It says if you do not do it, withdraw the troops, start over, because you have not received power under the constitutional power to declare war. This is not a strange power. It is a power that does not have a lot of Supreme Court cases involved because in this Nation until the last two decades it has always been known by Presidents and by Members of Congress that committing the resources, the young people of our society, all of our treasure, our thought, our time to a war would be agreed upon by the President and the Congress and the Congress would exercise the ultimate authority to place us into a war situation.

This statute is simply a manner of interpreting that in a 20th century context.

Now we have had extensive debate on this before, Mr. President. And I know even now some of our colleagues disagree with it, but it is the law and we accepted an oath when we became Senators of the United States to enforce the law. That is what we are doing today. I believe that oath requires us to invoke the War Powers Act and discharge our duty under the Constitution to either authorize or reject the President's decision to introduce American forces into the Persian Gulf in this convoying and reflagging operation, an environment in the Persian Gulf which surely meets the test of the War Powers Act by involving our forces in hostilities or in situations where imminent hostilities are clearly indicated under the circumstances.

Again, I hope there is no one in this Chamber or in the entire Congress of the United States who really has a factual question about whether these are war zones we are in and whether we are placing our troops and our sailors in a position where imminent hostilities are involved.

I do not want to spend a lot of time describing the circumstances in the gulf because every day—every day we hear it. It has been an active war region since 1980, and this is not a small war. Since 1980, there have been over a million casualties in this war sustained by Iraq and Iran. Since 1984, when the tanker war began, which we

are now actively involved in, over 200 ships have been attacked in the gulf. We formally entered the free-fire zone in July.

Now, Mr. President, many of us were concerned about this before, but when our ships enter a free-fire zone, as they have done escorting reflagged Kuwaiti tankers, we are then in a situation of imminent hostilities. We have now gone farther than that. We are building up toward a war force. We have deployed 24 vessels in this gulf. We have a quantum and qualitative jump of what we are doing in the Persian Gulf and we have more than 17,000 American servicemen in the area. Those vessels and those men are now not merely escorting tankers; they are protecting them from the very real threat of hostile action. We have already had one ship attacked and one of the ships we were protecting struck a mine and was damaged.

Our forces are operating under the rules of engagement which direct them to fire in the face of hostile acts. Our people are being paid an imminent hazard bonus and they should be because they are in hazard and they are in imminent danger, and, if we are going to do this, which we should and which we are and which, incidentally, involves the appropriating power of this Congress, then we should be honest and protect our servicemen and say that the War Powers Act is in force.

Let us support them. Let us not ignore what is happening. And our administration says that the War Powers Act is not operative.

Mr. President, it is just as absurd to say we are not involved in hostilities in the Persian Gulf as it is to watch the evening news every night and read the paper every morning and see reality in the world being reported to us which is completely different from what we are being told by people who are saying that the War Powers Act is not involved.

It is intolerable that we be in this situation as a result of a unilateral Presidential decision, a decision taken without congressional consent and without meaningful consultation.

I want us to be in this. I want us to have a vote on this. I want all of us to participate. I want the President to have the knowledge of where the people and the Congress are.

Under the Constitution of the United States, which we celebrate this week, Mr. President, the President of the United States cannot unilaterally decide to spend $20 million a month on specific military operations and argue he is simply implementing a general congressional policy. In fact, Mr. President, next year the President will have to come to Congress, and he may come this fall, with a supplemental appropriation to cover the costs of continued operations in the gulf—unless he wants to defer spending.

And this is what I am afraid. I hope that this will be addressed by my colleague from Virginia, the manager of the bill on the Republican side. I am concerned, and I hope there has been investigation into what is happening in the administration, that we are pulling money out of operations and maintenance around the world. We are robbing Peter to pay Paul in order to make a buildup in the Persian Gulf. I want to know where they are coming from and where the troops are coming from and what we are doing with our world posture in order to be involved in this.

We may have a vital interest and decide that that is where we want our vessels, that is where we want our carrier groups, that is where we want all of this operation we have started. But that is going to be a spending matter. And we could have attacked this on a spending matter and we probably will again. But we have got to give fair warning to everybody before we start—and this defense authorization is the appropriate place to do it—that we are involved in the spending of an enormous amount of money which has got to be authorized by this committee. It is going to have to be authorized by the appropriating committee or we are going to defer spending in other parts of the Navy.

My point is we will all be better off if we speak sooner rather than later.

Let me make my own position clear. I believe we have a vital interest in the gulf. I believe that we have a situation where the consequences of our policy have not been carefully charted or considered. And I am dismayed that we are prepared to spend billions without congressional authorization. There is no end to our commitment in sight, no criteria for what determines victory.

But the issue now before us does not hinge on how we feel about the policy. What it is is how we feel about a process that allows a President to violate the war powers of the Constitution which reside in the Congress. I think it is wrong under the congressional power to declare war and the War Powers Act as the law of the land is not to be followed.

I want to say to the administration they ought to welcome this amendment. It will give the President an opportunity to explain his policy to the Congress and to the country and to explain it in a persuasive manner. I hope that he comes up. I hope that he does it.

Mr. President, we are a great superpower in this world and we accept great responsibilities. No one here is advocating that we "cut and run." No one here is advocating that we micromanage our tactics in the Persian Gulf, which clearly is the job of our Commander in Chief.

But we are advocating the congressional involvement required by the Constitution. We are advocating Presidential compliance with the law. We are advocating a policymaking process that will draw a clear picture of the costs and the consequences in the gulf, a process which will help us clearly define and articulate the goals and objectives of our strategy in the gulf and how it affects the rest of the world, a process that will tell the American people precisely what we are doing and why.

Abraham Lincoln, who certainly understood the powers of the Presidency in this area very well, once wrote:

> The provision of the Constitution giving the warmaking power to the Congress, was dictated, as I understand it, by the following reasons. Kings had always been involving and impoverishing their people in wars, pretending generally, if not always, that the good of the people was the object. This, our Convention undertook to be the most oppressive of all Kingly oppressions; and they resolved to so frame the Constitution that no one man should hold the power of bringing this oppression upon us.

The only way to assure that the policymaking process—and the policy itself—is sound, is to adopt this amendment, invoke the War Powers Act, and get on with the deliberations and reach a national, rather than just an executive, decision.

I thank the Chair.

I see my friend from Rhode Island, the chairman of the committee, is waiting, so I will yield the floor.

The PRESIDING OFFICER. The Senator yields the floor.

The Chair recognizes the Senator from Rhode Island, Senator PELL.

Mr. PELL. Mr. President, I thank the Senator very much for letting me speak now, and the Senator from Arkansas, who should be speaking now, because he is a cosponsor with the Senator from Washington in this amendment.

I think this amendment is an excellent one. We debated an almost identical one in our committee and reported it favorably in July. We reported it by a narrow margin, but we still passed it out.

Mr. President, the war powers resolution of 1973, and the 14 years of experience with its operation, mark an era of continuing turmoil in executive-legislative relations. The atmosphere surrounding the resolution's passage and its subsequent invocations has been both contentious and confused. Continuation of this state of affairs indefinitely is domestically divisive and internationally dangerous. The prospects for significant improvement will depend upon the restrained realism and determined collaboration of both Congress and the executive branch.

As legal scholars have observed, the war powers resolution, and the reasons for its enactment, are best understood not as the consequence of a "runaway" Presidency but rather a "runaway" Congress. For years Congress has tended to shy away from the recognition and acceptance of its constitutional responsibilities regarding the commitment of U.S. forces to hostilities.

If ever there was any doubt there are hazards and hostilities going on in the Persian Gulf, all they have to do is read the newspaper, look at the casualty reports. We see the evidence each day that shots are being fired at tankers that are going through the gulf.

Events leading up to the final passage of the war powers resolution over President Nixon's veto in November 1973 reflected widespread uncertainty and disagreement among legislators as to what those responsibilities were. But the veto override marked a turning point in the views of most Members of Congress that, whatever the defects of the final version might be, Congress had a duty to assure itself a central role in decisions by the United States to use armed force. In short, the war powers resolution offers us an opportunity which should not be lost.

In the United States, the power to conduct warfare is constitutionally divided between the President and the Congress. Congress has the power to declare war, provide armed forces, and finance military operations. The President has power as Commander in Chief of the Armed Forces.

During the Vietnam war, Congress became increasingly concerned about its diminishing influence on the use of the Armed Forces. The war powers resolution was an effort on the part of the Congress to reassert its warmaking authority. This legislation enables Congress to limit the use of force by the U.S. Government by requiring the President to obtain congressional approval before introducing troops into hostile or potentially hostile situations abroad for more than 60 days. It was intended to reduce the chances of an overzealous President involving the United States in an unwanted war. As stated in the Foreign Relations Committee report (S. Rept. 93-220), this law was an attempt—

To fulfill—not to alter, amend, or adjust—the intent of the framers of the U.S. Constitution in order to insure that the collective judgment of both the Congress and the President will be brought to bear in decisions involving the introduction of the Armed Forces of the United States in hostilities or in situations where imminent involvement in hostilities is indicated by the circumstances.

The tragic attack on the U.S. frigate, the *Stark*, underscored the danger to all international shipping in the Persian Gulf—through which more than half of the West's oil supplies flow—posed by the protracted conflict between Iran and Iraq.

This incident raised serious questions about the U.S. role in the gulf. Both Iran and Iraq during the course of this 7-year war have attacked hundreds of ships coming in and going out of the gulf. The presence of U.S. naval vessels has not stemmed these attacks in any substantial way.

These questions are made even more compelling by the administration's decision to register 11 Kuwaiti oil tankers under American flags and by the Defense Department's declaration that the Persian Gulf is a zone of imminent hostilities. What happens if one of our ships is attacked?

We do not want to be dragged into a shooting war in the Persian Gulf if it can be avoided. Neither do we wish to become a part to the Iran-Iraq war—a bloody conflict that has reportedly cost 1 million lives already. It is imperative that we proceed carefully and with the full commitment and consensus of the American public.

Therefore, I urge my colleagues to support this amendment.

Mr. WARNER. Mr. President, I am wondering if the distinguished chairman of the Foreign Relations Committee would entertain just one brief question before he departs the floor? As I understand it, he has to preside over a hearing and may be gone for several hours, and I think it would be very helpful for the Senate to listen to a short colloquy here on this point, and I thank my distinguished colleague from Alaska.

During the past 24 hours, the distinguished chairman of the Foreign Relations Committee, the distinguished chairman of the Senate Armed Services Committee, and I had an opportunity—just a few of us—to meet with Foreign Minister Shevardnadze.

In the course of that meeting I asked him, "Isn't it in the interest of both the United States and the Soviet Union that the war in the gulf be contained first and then, hopefully, stopped?"

And he readily acknowledged that to be the case. The Senator was right there, not but a foot away, to my recollection.

Mr. PELL. I recall the question. I recall the answer. He completely agreed.

This is one of those cases where, to my mind, we and the Soviets have a parallel set of interests.

Mr. WARNER. I am so glad that the chairman said that, because that was my next question to the Foreign Minister. I said, "Mr. Minister, in what areas can the Soviet Union and the United States work together?" And you will recall, Mr. Chairman, that he said the forum would be the United Nations. We can work together in the United Nations. We have already achieved one resolution, and we are working on the second.

So I say to my good friend from Rhode Island, the distinguished chairman: Why would this Nation want to impose on our chief negotiator, the President of the United States, a legislative restriction in the nature of the War Powers Act at the very time when he is endeavoring in the United Nations forum to work with the Soviet Union and other allies to bring to a conclusion, or first contain and then to a conclusion, this unfortunate war in the gulf? Why hobble one nation's chief executive officer and let the other nations' chief executive officers be in that forum without a restruction such as this?

Mr. PELL. This is a question involving varying points of view. It does not hobble the President. It strengthens his position because it means that he would be acting in partnership with the Congress. He is, now, acting alone by executive fiat. So I would say the answer to your question, is that it strengthens the Government, strengthens the Presidency, and mandates that we work together.

In reply to an earlier part of your question: If ever there is a situation designed for the United Nations' peacekeeping force, it is that in the Persian Gulf.

I remember being in San Francisco at the start of the United Nations. For 3 months we debated the peacekeeping provisions of the charter, which were those that provided for a peacekeeping force, which has never been adequately used in all the years since.

Here we have a situation where four of the five permanent powers on the Security Council have vessels in the area and where they should be working together as a task force.

Finally, I think the reply that Mr. Shevardnadze gave was aimed not so much at the United Nations as a whole but at the Security Council.

Mr. WARNER. Mr. President, the distinguished chairman is correct. The answer was, "in the Security Council." But I point out that the amendment now before the Senate there would be only 5 or 6 weeks in which to make a determination to declare war, adopt a limited time extension, or tell the President to pull the troops back.

Given the current state of uncertainty, and since at this time the United Nations is working toward ending the war and our President, through his Ambassador, is working in that forum, why would we want to trigger more uncertainty at this critical time?

Mr. PELL. I do not think it would give uncertainty. If it were endorsed by Congress, I think it would strengthen our chief executive.

Mr. WARNER. What is it, a declaration of war?

Mr. PELL. Not a declaration of war. The compliance of our executive

branch with the provisions of the war powers resolution.

Mr. WARNER. I have taken more than my allocated time. I will revisit this later.

The PRESIDING OFFICER. The Senator from Rhode Island has not yet yielded. Does the Senator from Rhode Island yield the floor?

Mr. PELL. Yes.

Mr. HATFIELD. Mr. President, I thank the Senator from Rhode Island for yielding to a question. Mr. Chairman of the Foreign Relations Committee, may I ask just a simple question. Is the War Powers Act a part of the law of the land?

Mr. PELL. It is.

Mr. HATFIELD. Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. I thank the Chair.

Mr. President, I do not think it is appropriate we debate the merits of whether this topic is appropriate and timely for this body. I do not think there is any question about the very fact that we have nearly 10,000 service personnel in the Persian Gulf, over 40 U.S. naval vessels, and we have not had a debate on the War Powers Act, which is applicable, certainly with regard to the presence of Americans in that theater.

Mr. President, we have to face up to the implications of reality and that is the increasing military buildup in the Persian Gulf. My purpose in joining with my colleagues from Washington, Oregon, and Arkansas in calling up the amendment for invoking the War Powers Act is to encourage the participation in this very discussion.

We were told, initially, that our involvement in the Persian Gulf would be one involving little risk and little presence from our Navy. Well, that just has not been the fact. We see a total of 40 to 41 warships there today. That is a reality.

We see 10,000 American troops. And we see the Secretary of the Navy who just returned from there, reporting that it may be possible if a conflict is avoided, that the region stabilize, to reduce that presence. But for now the buildup continues and the possibility of conflict with Iran comes closer every day.

This is not what our planners had in mind when they decided to meet the Iranian threat against Kuwait and others by reflagging Kuwaiti vessels.

Reflagging, we will all recall, was supposed to deter Iran from daring to attack without committing major United States forces to the region.

We have had a debate in this body on the merits of reflagging. It was an extensive debate and I think it was a revealing debate because it proved that really what the reflagging issue was was a basic subterfuge. What we had done was to allow foreign ships to be reflagged. What we had done was basically put up the American flag for rent, for lease; something that has never been done on previous occasions. We set a very, very dangerous precedent. The sham of American involvement in which those ships were reflagged was truly a tragedy in the sense that we were simply saying that, under the interpretation of the mechanics of reflagged, those vessels, as long as they stayed in foreign commerce, even though they carried an American flag, an American captain and radio operator, would not have to be crewed by American sailors unless those vessels went into an American port.

Of course, the intention was that they would never go into an American port. It is interesting to reflect on the actions of Great Britain and the Soviet Union with regard to reflagging.

So, Mr. President, we find ourselves in an extraordinary position here, an escalating reality associated with our presence in the Persian Gulf; pouring in more warships, more personnel. The difficulty for this Senator, Mr. President, is we have no clear end in sight.

How are we going to know when we can bring our fleet back home? Are we saying that we need a 40-ship Navy in the gulf on a permanent station now to proceed?

The war in the gulf goes on. The U.N. Secretary General has returned from his peace mission unsuccessfully. Iran and Iraq have both resumed attacks on targets in the gulf, and we are moving further every day in my opinion, by degrees, away from our previous policy of neutality in that war and toward the point of siding with Iraq and its Arab allies against Iran.

You may have noticed the administration is no longer calling it the Persian Gulf. If is becoming the Arabian Gulf.

I do not disagree with the position that we are committed to, and that is to keep the Persian Gulf open. But it is fundamental that this body have an opportunity to debate the merits of the law which has been enunciated by my colleagues from the States of Washington and Oregon at some length.

I support the President's fundamental policy in the Persian Gulf. We had our forces there for 4 years to help in keeping peace and to keep those sealanes open. We have a right to be there and we have a right to assist if modern Arab governments are threatened by subversion and intimidation by the Ayatollah's fanatic regime in Iran.

But make no mistake about it, Mr. President, we have, as the U.S. Senate, a right to discuss this subject in a timely manner, and this is certainly a timely manner, if, indeed, we are not somewhat tardy on it.

Mr. President, the War Powers Act states clearly that whenever the President sends our forces into a situation where there is imminent danger of hostility, he must report to the Congress. He must report to the Congress. And that introduction cannot continue unless the Congress takes on some shared responsibilities by authorizing the intervention.

We are asking the administration to share that responsibility. It is appropriate that we do so.

This is a serious debate about the constitutionality, perhaps, of the War Powers Act; perhaps this matter ought to be taken to the Supreme Court and a clear decision rendered. Nevertheless, as I have indicated, it is the law of the land. The administration has argued that the gulf is not an area of imminent danger, but on August 26 that argument lost its force, lost its credibility, when the Department of Defense declared the gulf an area of imminent danger for the purpose of military pay. That is one step lower than hazardous duty pay.

Mr. President, in conclusion, no policy in the Persian Gulf will succeed unless it is sustained for the long haul, and no policy can be sustained unless it has congressional support and the support of the people of the United States. That is what Congress is asking for in this debate. Let there be no mistake about it.

While my colleague from Virginia discusses the merits of the timeliness of this matter being brought up, I urge him to consider the merits of what I have just said. I would encourage attention at this time to the reality that no policy in the Persian Gulf, again—and I hope my friend from Virginia is listening—can succeed unless it is sustained for the long haul and unless it has congressional support.

I am joining my colleagues from Washington, Oregon, and Arkansas in calling for the invoking of the War Powers Act in the Persian Gulf. In my judgment, the risk of conflict there has become very real and I think the majority of my colleagues will agree. It requires this country's unity behind a well-thought-out policy, and that policy, Mr. President, cannot just be a policy of the President. Congress has the right to share the decision of where we need to go in the Persian Gulf and it has an obligation to share the responsibility for carrying it through.

I appreciate the accommodation of my friend from Nebraska.

The PRESIDING OFFICER (Mr. WIRTH). The Senate will be in order.

The Senator from Alaska is recognized.

Mr. MURKOWSKI. Mr. President, I yield to the Senator from New Hampshire.

Mr. BYRD. Does the Senator yield the floor?

Mr. MURKOWSKI. I yield the floor.

Mr. BYRD. Mr. President, I do not seek the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

VISIT TO THE SENATE BY PARLIAMENTARIANS FROM THE PAKISTAN PARLIAMENT

Mr. HUMPHREY. Mr. President, as is self-evident, the Senate is engaged in a debate on a very important question. Still, it is important that we pause for a moment to examine a situation in the world that offers us encouragement and hope and to take the time to greet several of our fellow legislators from Pakistan who are here in Washington to meet with Government officials.

Mr. President, we are honored to have on the floor of the Senate today, five visiting members of the parliament of Pakistan.

This is an historic visit, as these elected parliamentarians are testament to the important strides that Pakistan is taking to restore democracy and elected government.

Mr. President, 1985 was an important year for the people of Pakistan. In January of 1985, Pakistan's President Zia Ul-Haq announced that parliamentary and provincial elections would be held the following month. In those elections, more than 1,200 candidates contested for the more than 200 seats in the National Assembly. Although the elections were boycotted by some, an article by Prof. William Richter that appeared in the February 1986 edition of Asian Survey states: "The February elections were widely regarded as relatively clean and fair."

In connection with fairness, it is significant to note that voters in those elections defeated several of President Zia's own Cabinet officers.

That is a remarkable and incontrovertible testament to the fairness of the elections, it seems to this Senator.

Following the elections, the provincial assemblies moved quickly to elect members of the upper house—the National Senate. President Zia designated Mr. Muhammed Khan Junejo as Prime Minister, and by April of 1985, a 13 member cabinet was announced. In keeping with the Prime Minister's promises. On December 30, 1985, martial law was formally abolished and civilian government was once again restored.

Mr. President, these are very significant developments. We are all encouraged by the progress that Pakistan continues to make. During a visit to Washington last summer, Prime Minister Junejo discussed with President Reagan Pakistan's progress toward the restoration of democracy. A joint statement released at the conclusion of that visit states:

> The President lauded the return of representative democracy to Pakistan, praising Prime Minister Junejo and President Zia for the steps taken to end martial law and restore to the Pakistan people the full liberties granted by the 1973 constitution.

Earlier this year, the State Department formally reported to Congress that "democracy and respect for human rights advanced significantly in 1986."

Mr. President, my introduction would be incomplete without paying tribute also to Pakistan's courage and principle in standing as a bulwark against Soviet imperialism and for her compassion toward the more than 3 million refugees in Pakistan who have fled the Soviet war in Afghanistan. It is a simple fact, that were it not for Pakistan's courage, by now Afghanistan would have been dragged bleeding into the Soviet Empire and the security of all of south central Asia imperiled. For her stand Pakistan suffered numerous cross border attacks and KGB-inspired terrorism and bombings throughout Pakistan, not just the borders. She is bearing a heavy burden today and richly deserves continued American commitment to her security and economic well-being.

Mr. President, I urge that each of my colleagues take a few moments, even in the midst of this serious debate, to greet our visitors from Pakistan. These democratically elected members are our counterparts in the legislative assembly of Pakistan.

They are Hasan A. Sheikh, Syed Mohammad Fazal Agha, Begum Salma Ahmed, Syed Nusrat Ali Shah, and Mohammad Siddiq Khan Kanju.

Mr. President, I thank the Chair.

(Applause, Senators rising.)

Mr. WARNER. Mr. President, before our distinguished colleague from New Hampshire retires from his desk here in the Senate to take his guests on a tour of the Nation's Capitol—and I am sure that many would want to join me—I want to recognize the contribution that the Senator from New Hampshire has made on behalf of freedom fighters in Afghanistan and on behalf of the people of Pakistan in recognition of their great support of that unfortunate war-torn nation.

This fine Senator has time and time again come to the floor of the Senate to protect the interests of those freedom fighters. We recognize that with appreciation and we thank the Senator from New Hampshire for bringing his guests to the Chamber this morning.

Mr. HUMPHREY. Mr. President, I thank the Senator from Virginia for his kind remarks. I likewise thank him, Senator EXON, and the majority leader, Senator BYRD, for making arrangements to accommodate our visitors even in the midst of this very serious debate on a very grave question.

Mr. EXON. Mr. President, let me add my thanks for those of us on this side of the aisle to the distinguished Senator from New Hampshire for his efforts. We thank him for what he has done and we certainly welcome our distinguished friends from that part of the globe that plays such an important part in the fight for freedom today. We salute you all.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1988 AND 1989

The Senate continued with consideration of the bill.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, we trial lawyers have an expression that I am sure most Members of this body have heard from time to time, and it is that when you have the law on your side, argue it to the judge. When you have the facts on your side, argue them to the jury. And if you do not have either one, they say, run about and hoot and shout.

My trial lawyer instinct surfaces at a time like this; I divinely wish that I could argue this case to the American people because it is seldom in this body, let alone in lawsuits, that you have both so patently on your side. For the benefit of my colleagues who may have forgotten or may never have known, I want to read the law and remind you what the law is that you were sworn to uphold when you came here.

Now, Sam Ervin, the distinguished former constitutional scholar from North Carolina, used to say in this body, "English is the mother tongue. It means what it says and you should be able to read it and understand it." So, English being the mother tongue, let me read the mother tongue to you. This is the language that was hammered out over a long, protracted debate.

The distinguished majority leader from West Virginia was here, as were a few other Senators in this body, when this law was passed. It is the War Powers Act which was very carefully crafted to make sure we did not repeat Vietnam ever again. I want to also remind you that President Nixon vetoed this and it was overridden, to show the overwhelming support of the Congress for making sure that we did not blunder into a war that cost precious American lives for no tangible benefit.

Section 3:

The President in every possible instance shall consult with Congress before introducting United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances.

Is there anyone in this body who wants that repeated? Is there anyone here who does not understand that? It says the President in every possible instance will consult with the Congress. Have you been consulted, Senator?

I can tell you the answer is no, not one single Member of this body or the other has been consulted.

Section 4(a):

In the absence of a declaration of war, in any case in which the United States Armed Forces are introduced, (1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances; (2) into the territory, air space or waters of a foreign nation while equipped for combat except for deployments which relate solely to supply, replacement, repair or training of such forces.

Is that not clear? What is it that anyone does not understand? It says that in the absence of a declaration of war, if you introduced American forces into an area where imminent involvement and hostilities is clearly indicated, you will invoke the War Powers Act and give Congress 60 days in which to decide whether we agree with it. This has not been done. It was not done over the clear objection of Howard Baker, the chief of staff, who warned the President, "This is an unnecessary battle with Congress. Give Congress a chance to get on board with you."

Caspar Weinberger and Frank Carlucci said, "No, let's thumb our nose. We can pull this off. The American people will be for us."

I might say at this point the American people are not for them. Every single poll I have seen shows the American people are overwhelmingly opposed to what I refer to as this nonpolicy.

It says imminent involvement in an area of hostilities or possible hostilities. And here is a memo dated August 25, 1987, from the Principal Assistant Secretary of Defense for Force Management and Personnel, and it is a request which says:

The commander of the United States Central Command has requested, through the Joint Chiefs of Staff, that the Arabian Gulf and its airspace, Bahrain and Kuwait, be designated an imminent danger area for the purpose of authorizing the subject special pay for military members performing duty there. Our review of the situation in the Arabian Gulf indicates that the special pay is warranted on the basis of terrorist activities and other conditions.

Then it goes on to say:

To qualify for the pay, military personnel, including aircraft crew members, must be: (1) permanently assigned; (2) perform duty in the designated area for a minimum of 6 days; and (3) be exposed to hostile fire or explosion of a hostile mine.

He says those conditions of hostile fire have been met and therefore we ought to be paying members of the armed services combat pay, as we used to call it in World War II. You remember that one. It was in all the papers.

Now, here is the War Powers Act saying if you are putting American troops into an area of imminent hostilities, the President must invoke this act, and here is the executive branch, the Principal Deputy Assistant Secretary of Defense for Force Management and Personnel, asking for combat pay for the servicemen there because those conditions exist.

Do you want to hear the clincher? On September 7, the Secretary of the Defense Department said you are right, and we will start paying them on that basis.

So every airman and every sailor in the Persian Gulf is receiving pay because they are in an area of imminent hostilities. On the one hand they are saying we do not have to abide by the War Powers Act because it is not in an area of imminent hostilities, and on the other hand saying we are going to pay everybody because they are in an area of hostilities.

So, jury America, what do you think about that?

Yesterday, the President was in Philadelphia, and all of us got goosebumps once again talking about the great charter of this Nation, our magnificent Constitution. I did not hear the President at any time this year quote Jefferson or Madison on their concerns about who would declare war. You know the Foreign Relations Committee of this body has debated this very piece of legislation and voted 10-to-9 in favor of it. It has not come up on the floor for all the obvious reasons but the Foreign Relations Committee reported out this precise language.

Mr. President, I hear Barry Goldwater quoted around here with a great deal of regularity. I do not quote Senator Goldwater very often because we did not agree very often. But I will tell you one thing. Barry Goldwater and Scoop Jackson and DALE BUMPERS are three Senators who said you send 1,500 Marines to Lebanon and you are going to be inviting an unmitigated disaster, and I must say, praying all the time that it would not happen. And I invite the Members of this body to recall what kind of consultation you had from the White House on that one. You had no consultation. You were told that these Marines were on their way to Lebanon for purposes which nobody understood. And that is one time that at least we had the sense to get out when it proved to be a disaster.

Senator Goldwater was interviewed by the Christian Science Monitor on August 25, barely 3 weeks ago. What did he say about our Persian Gulf policy? He says, "* * * the President is now courting further damage to the United States and to his administration with unnecessary, high-risk policies in the Persian Gulf. We're inviting disaster," says the Senator. And he goes on to say, "Personally, as one who has been through wars and lived with them most of my life, I don't like what the President's doing in the Persian Gulf. I think we're inviting disaster. In fact, I don't see how we can avoid it."

I ask unanimous consent that that Christian Science article be inserted in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Christian Science Monitor, Aug. 25, 1987]

GOLDWATER: REAGAN "INVITING DISASTER" IN PERSIAN GULF

(By John Dillin)

The Iran-contra crisis has cost Ronald Reagan his opportunity to be among the 20th century's greatest Presidents, says retired Sen. Barry Goldwater of Arizona.

Iran-contra has caused "irreparable harm" to the President, says Mr. Goldwater, who adds: "Reagan will be lucky if he can gain even part of the prestige back that he held."

Goldwater says the President is now courting further damage to the United States and to his administration with unnecessary, high-risk policies in the Persian Gulf.

"We're inviting disaster," says the senator, who was interviewed at his home here near Camelback Mountain.

Goldwater, regarded as "Mr. Conservative" within the Republican Party, says that historically, Reagan will rank behind both Harry S. Truman and Dwight D. Eisenhower as leaders in the White House.

The senator, who was the GOP nominee for president in 1964, blames Reagan's Iran-contra problems largely on the White House staff. He says:

"Republicans elect a president, and he doesn't know a thing about picking a staff. Right back to Eisenhower, we've had nothing but problems with White House appointments. But particularly Reagan. Reagan has . . . picked some of the worst we've ever had."

Goldwater says the staff has been arrogant, naive, and inexperienced.

"They just don't understand the art and the work of politics. . . . You have to know your way around. You have to know who to talk to. . . . And you have to be willing to listen."

Reagan's saber-rattling in the Persian Gulf particularly concerns Goldwater at this juncture. He explained:

"Personally, as one who has been through wars and lived with them most of my life, I don't like what the President's doing in the Persian Gulf. I think we're inviting disaster. In fact, I don't see how we can avoid it.

"One of these days, they're going to sink . . . an American tanker or an American warship. Then what do we do? Now, if we don't do anything, we can kiss the whole world goodbye, because we are not held in great esteem around this world today. We're looked on as sort of a paper tiger. . . .

"I don't believe in putting ourselves in a position that can result in war. And I think that's exactly what Reagan has done in the Persian Gulf."

Goldwater, who eventually reached the rank of major general in the Air Force Reserve, is a former Army Air Corps pilot who served in southern Asia during World War II. Looking back on his experiences there, he says:

"I hope and pray that the President doesn't get us into a war in the Persian Gulf. . . . That was my neck of the woods, and that's no place for an American."

Goldwater discounts the threat of the Iran-Iraq war to the supply of oil.

"If the Iraqis and Iranians want to fight it out, and it's going to go on forever, let 'em fight," says the senator. And if the warring nations start sinking Saudi and Kuwaiti tankers, "that's their business."

The US would be best served, says Goldwater, by devoting its energy to developing the oil supplies within this country, especially in Alaska. "We have all the oil this country will ever need," he insists.

The senator, who retired in January, also commented on the Republican Party, the conservative movement, the 1988 presidential race, and other topics. Excerpts from the interview follow:

What is the political outlook for the GOP?

I think we have at least one more presidential election that we will win. After that it will be touch-and-go, because we will then have run out of . . . money and ideas, and the people by that time would have gotten tired of the Republicans. These things go in cycles.

Does that mean the conservative movement has peaked?

No, no, no. The conservative movement is stronger now than it has ever been. . . . The great strength of the conservatives today are the young people. I lecture at Arizona State 25 or 30 times a semester, and at other schools, and I find a decided difference today—young people who understand the Constitution, who understand the American enterprise system, who are looking for jobs, not handouts. I am very encouraged by it, and I think it is going to continue to be that way.

But the Republicans won't benefit?

That's the cyclical effect that I've always believed in. . . . A man who is conservative [doesn't] always votes conservative.

Are there any true conservatives running for president in 1988 among the Republicans?

Yes. He may not be as "bad" a conservative as I am, but I think George Bush is going to be the man. I think he'd be a . . . good president.

But Bush comes from the East, which is that part of the country you once wanted to saw off from the rest of the US.

Well, he lived in Texas long enough to get over it.

Do any Democrats look strong in '88?

Yes, but they are not running. I think Senator [Sam] Nunn of Georgia and former Governor [Charles] Robb of Virginia—Robb went to school right here in Phoenix with my kids—he's a good man. But Nunn is about the best man we have in this country right now.

Some have compared Iran-contra to Watergate. Is it comparable?

No. It didn't prove Reagan to be a liar. [Watergate] proved Nixon to be a liar.

Besides our problems with the budget deficit, what major conservative goals remain unfulfilled?

I can't think of anything we've fulfilled, to tell you the truth.

Inflation is down, for example.

Inflation is down, interest rates are down, but if they weren't, we'd already be bankrupt.

So a major concern would be . . .?

Welfare. If we don't solve the problems of the welfare state, then we are going the way of all other nations that have tried it. Bankruptcy, then dictatorship. . . . We have today nearly 50 percent of our people [to some degree] dependent on the federal government for their livelihood. . . . I'll give you a good example. I started paying social security when it first came out—$4 a month. One day I counted everything that I could think of that I had put into social security [and] I hadn't put more than $10,000 or thereabouts in my whole life. Yet I now get that much a year, and more. [Goldwater donates his check to charity.]

So are you optimistic, or pessimistic?

I am always an optimist about my country. I'm an optimist because of the young people and their attitude. If I looked only at the elected officials and the Congress, the war is over. But I think the American people are beginning to realize what awful shape we are in.

Mr. BUMPERS. It has always been a curious anomaly to me that we can see the folly or sometimes the correctness of policies of the past and yet cannot apply our common sense and our knowledge of history in those events to situations that exist now which seem as clear as the nose on our face. Fourteen years out of Vietnam we are in the Persian Gulf; 13 years after Watergate we are into Irangate. It seems to me that memories get shorter all the time.

The President says we can accomplish this with six ships. The estimate at this very moment as I speak is that there are 41 warships, including minesweepers, in the Persian Gulf area to enforce our policy there. And I will come back to the cost in just a moment.

We have finally, because the President has insisted, gotten a little help from some of our allies with minesweepers because we did not have a minesweeper.

The other day there was a cost analysis done by the Pentagon, and they said it is going to cost about $1 million a day to carry out this policy. But the report went on to say it is going to be much more than that.

So let us just assume with a little embellishment and maybe a little hyperbole that it is going to cost a half billion a year to carry out this policy, and I frankly think that is very conservative. Are the Kuwaitis going to reimburse us? That is negative. Are Japan and the western Europeans, who get the oil, going to reimburse us? That is a negative. Is anybody going to help? And outside of those little minesweepers that have been sent over there, the answer is no.

Just by way of diversion, when we found out we did not have a minesweeper that we could even send to the Persian Gulf, my question is, "'My God, what did you do with that $1.5 trillion we gave you?" For 7 years we have had this monumental, staggering, unbelievable defense buildup only to find that all of those complicated laser beams and computers and guided weapons are not worth a dime against Iranian mines.

Not only are the Kuwaitis not paying to help us, but they will not let our ships berth there, and just recently they have allowed a few Sea Stallion helicopters to land there, not be based there, but to land on Kuwaiti soil. You will recall that when we started to send Sea Stallions to help with mine detection there, not minesweeping, but mine detection, that because Kuwait would not allow an American plane or helicopter to land on their soil, we had to send the Guadalcanal, a helicopter landing ship, halfway around the world to the Indian Ocean. Then we put our Sea Stallions on C-5 cargo planes and flew them to Diego Garcia, an island in the middle of the Indian Ocean, where they stayed until the Guadalcanal about a week later sailed close enough that they could fly the Sea Stallions from Diego Garcia to the Guadalcanal from whence the Guadalcanal sailed to near the Persian Gulf.

Can you imagine what that cost was? Can you compute the cost of that simply because Kuwait whom we are there to assist would not let Sea Stallions land, would not let C-5 cargo planes land on their soil?

Oh, jury America, I wish you were listening to all of this. I promise you if they were listening this body would be inundated with indignant mail.

Mr. President, when are we going to leave? I never will forget, I thought it was a pretty good speech. Nobody else much did. But I remember when Frank Clement was the young Governor of Tennessee. He delivered the keynote address. I do not know. I guess it was 1952, at the Democratic National Convention. And the theme of it was "How long, America?" And about every 2 minutes he would do just what I did, spread his arms and shout, "How long, America?"

So I ask those people on the other side of this issue, how long are we going to stay in the Persian Gulf? Tell the American people how long we are going to expose their sons to a hostile environment. And while you are telling them that, which you cannot do of course because there is no end to it, this is open ended, tell them what we are getting for exposing their sons to enemy fire. Tell them where the big benefits to America are and how we come out of this deal.

There is not one Member of this body—I started to say there is not one thoughtful Member of this body, but that eliminates a few, I think. There is

not a Member of this body who does not know that we are courting disaster in the Persian Gulf. There is not one person here in this body who does not know that if we continue this policy until the Iranians and the Iraqis decide to end that war it may be 5, 10, 15, 20 years. You are not dealing with rational people. And there is not one person in this body who does not know a lot of moms and pops whose sons are going to die in the Persian Gulf. And for what?

Look at Senator NUNN's report to the majority leader about the rationale for our being there. The Soviet threat? That will not wash. As the Kremlinologist says: "As long as you can fall back on that, you don't have to think. Just say it can't come from anything else."

We are scared the Russians will take over the Persian Gulf. They have put three ships in there carrying oil.

I will tell you one thing—the Russians "ain't" dumb. When the Kuwaitis went to them and asked them to put their flag on Kuwaiti tankers, they said: "If you want your oil out, we'll lease some ships on a business proposition. We'll carry your oil out for $1 or $2 a barrel on our tankers, not yours."

It is a pure dollars and cents proposition for the Soviet Union. But once you told the White House the Soviet Union was going to be in there with three tankers, we showed them a thing or two. We put our flag on 11 Kuwaiti tankers, and are contemplating maybe 11 more. We "ain't" even getting paid. We do not even ask the Kuwaitis to pay the additional hostile fire pay.

I sometimes think—I sometimes know—that we are not very sensitive when it is somebody else's sons who are going to die. We can wave the flag and say: "This is all in the defense of America, and this is patriotic, and you are improving the security of America."

I suppose that is pacifying and ameliorating for some parents who have lost a son. I can tell you one thing: It would not pacify this father if he lost a son in the Persian Gulf.

Do you know what is really ironic? Listen to this: I remember being in Iran in 1977, I guess, and going to some of their air bases to look at the F-14's we were selling the Shah. They had built these big concrete revetments to shield those F-14's. Not only were we selling them the F-14, which is one of our most sophisticated fighter planes, we also were selling the Phoenix missile, by far and away the the most sophisticated air-to-air missile we have.

There were seven or eight Senators standing around, and we said to the Shah of Iran, "Why do you want all this weaponry?" President Nixon had just sent the Shah a shopping list and said, "Take what you want."

The Shah said, "Who is going to defend the Strait of Hormuz? We are your friends. We got these weapons to defend the Strait of Hormuz for you, so that oil will flow."

Is that not rather ironic? Right there, they have our F-14's and our Phoenix missiles. They are not only guarding the Strait of Hormuz; they are trying to close it.

In the latest arms sale caper to Iran, we sell them the Hawk missile, easily one of the most sophisticated ground-to-air missiles in the world.

So, in all honesty, we should tell American boys and their parents: "Not only may you lose your life; you may lose your life at the hands of American weapons."

We have sold Iran the most sophisticated weaponry we have, and they may shoot down our aircraft with their Phoenix missiles or they may shoot down our aircraft with their Hawk missiles.

We never remember, in all these arms sales around the world, that our weapons last longer than our friendships, and that is one of the reasons I almost automatically never fail to vote against these arms sales.

We left Vietnam the third most powerful Nation on Earth in terms of weapons when we pulled out of there. Look at the world's revolutions and see what kind of weapons a lot of the Communist nations or the Communist rebels are using. They are American-made weapons that we left behind in Vietnam. The Vietnam corollary is crystal clear to this Senator.

Secretary Webb was an opponent of this policy.

Mr. WARNER. Is there a time at which I might ask a question and do so in a way not to interrupt the train of thought of my distinguished colleague from Arkansas?

Mr. BUMPERS. The minute I finish, I will turn to you and ask you to ask all the questions you want.

Mr. WARNER. And you will remain, and we can have a colloquy?

Mr. BUMPERS. I will be delighted to do that.

Mr. NUNN. Mr. President, will the Senator yield for a procedural question?

Mr. BUMPERS. I yield.

Mr. NUNN. Do we have a time agreement that has been entered into on this, or is one possible?

Mr. WARNER. Mr. President, I have made inquiry on this side. There are several Senators who wish to speak; and as soon as I can ascertain the number of speakers and the probable duration of their statements, I will be happy to advise the chairman. I share his hope that perhaps we can address the majority leader's inquiry and arrange for a vote, perhaps before noon, on this important matter.

Mr. BUMPERS. I would hope so.

Mr. WARNER. It would be my intention, Mr. President, to move to table, but only Members have been given an opportunity to speak.

Mr. NUNN. I do not want to interrupt the Senator from Arkansas at this point, but I would like to have about 2 or 3 minutes for an announcement, and I will wait until he can give me a signal to make that announcement, which is unrelated to this amendment.

Mr. BUMPERS. I will be happy to do so.

Mr. President, some said that the rationale, besides ensuring the oil coming out of the Persian Gulf—incidentally, one of the questions I will ask the floor manager when I finish speaking is how many tankers have been sunk in the Persian Gulf since the Iran-Iraq war started, and how much oil has not gotten out of the Persian Gulf since the war started, in order to discuss one of the present rationales for doing this—that is, the freedom for oil to get out; the other is freedom of the seas; and the other is the Soviet threat.

Some said that—and this made a little sense; of all the reasons given, one made a little sense. Some said that maybe by going in there and obviously taking the side of Iraq—which we are doing, make no mistake about that—we can convince the Iraqis to call a halt to the war in the gulf, because they have been the biggest offenders. They have attacked more shipping, by a margin of 2 to 1, than have the Iranians. Everybody knows that if we put any pressure on the Iraqis, it did not work. Just yesterday, they were still busy attacking shipping in the gulf.

Mr. President, what is our response going to be when we start losing American lives? I predict that unless Congress stiffens its spine and says, "Let's stop this nonsense," the minute American lives are lost, the war will widen, the American people will turn in favor of attacking Iran, and we will be enmeshed in another Vietnam, and that is the Vietnam corollary.

We have never in this country lost anything that I know of, in my knowledge of history, by stopping and being reflective. I certainly do not know of a time in this country when we have benefited by plotting the law so totally.

There is an old expression in Arkansas: "Everybody's business is nobody's business." We have been in the Persian Gulf for a while now, and inertia has set in. As long as no ships are sunk and no American boys are being brought home in those green bags, inertia sets in, and everybody says, "Well, maybe it's not so bad." I do not believe there is nearly the sentiment in this body or in Congress right now that there was 1 month ago or 2 months ago. It is very difficult to wake

people up to something that is not immediately threatening.

One of the things I objected to from the beginning on this thing is that I think it is a gross demeaning and belittling of the American flag.

I think about the goose bumps I had when I marched down the parade field, graduating from boot camp.

As the Senator from Idaho and the Senator from Virginia said on the floor, they are both marines, and they remember precisely what I am talking about.

The American flag was in front of us and we were so happy and proud that we had even survived boot camp.

Incidentally, that drill instructor in the movie "Full Metal Jacket" is a weakling compared to the one I had. But I will never forget, probably the most exciting, exhilarating moment of my life when I think about that flag that gave me goose bumps that day, and now that flag is flying on the Kuwaiti oil tankers.

I do not know why every veteran in the country would not take exception to this.

So my good colleagues, as we celebrate this 200th birthday of our Constitution, the document that you held your hand on when you came here and said "I swear to preserve, protect and defend the Constitution," and that means you not only will defend the Constitution but the laws passed in pursuance to the Constitution.

So as Atticus Finch, the defense lawyer in the book, and movie, "To Kill a Mockingbird," said in his closing argument to the jury in that little southern town in the twenties when an innocent black man was charged with raping a white woman, Atticus Finch said to the jury in closing his argument, "For God's sake, men, do your duty."

I yield the floor.

Mr. WARNER. Mr. President, my first inquiry to our colleagues who have sponsored this amendment—I regret Mr. HATFIELD is not present, but we do have two on the floor—is to make an inquiry as to what it is they are trying to do specifically. I have examined the amendment with some care.

Mr. NUNN. Excuse me.

Will the Senator from Virginia yield without interrupting on this point?

Mr. WARNER. Yes.

Mr. NUNN. I need to make an announcement so the colleagues and people who follow the overall debate on this Armed Services Committee authority bill can begin doing some things.

We have this Persian Gulf amendment up. This is a major amendment, very important amendment. Certainly no one should be pushed. I would hope we could complete it as indicated by noon or before.

Then this afternoon, starting about 1:30, I am told that the Senator from Oregon and the Senator from Arkansas will be ready to pursue two big chemical amendments, and I would hope we would begin thinking on both sides of the aisle about whether we can get time agreements on those amendments.

My observation is that you do not change many people's minds on chemicals on the floor of the Senate.

I would hope we could recognize that and have a reasonable time limit.

We have a nuclear testing amendment by Senator KENNEDY, and I would hope we could get a time agreement on that one and perhaps pursue that one today also.

We have an ASAT amendment.

Mr. WARNER. Excuse me. Mr. President, in view of the announcement which I understand was made this morning—I have been on the floor here since 8:45—on the matter of scheduling, do we know whether the distinguished Senator from Massachusetts still wishes to propose that amendment?

Mr. NUNN. I do not know. I cannot answer my friend from Virginia. I think we have to ask the Senator from Massachusetts on that point.

There is an ASAT amendment by Senator KERRY and I understand that he is ready on this one but needs to do it some time this afternoon rather than later on this evening.

We have an amendment by Senator JOHNSTON to reduce the funding for strategic defense initiative.

We have an important amendment by Senator BUMPERS and Senator LEAHY on SALT II compliance.

Those are the ones that are going to take some time.

I have every intention of being here, provided the majority leader agrees, and the Senator from Virginia, I believe, concurs in this, all day tomorrow, and probably until about midnight tonight. I do not want to go later than midnight tonight because I want to have a big day tomorrow and get as many amendments in as possible, and I see no need going to 3 or 4 o'clock in the morning. I think we are going to have to go to about midnight tonight and probably about 6, 7, or 8 o'clock tomorrow night, and the only way it can be avoided, as I say, is if we can get time agreements on virtually all of those amendments, and in addition to those amendments we would have to get some time agreements on other amendments that are not in the same category as far as the lengthy debate but could stretch out—any one of them could stretch out into 5 or 6 hours debate.

We have an amendment by Senator WILSON from California on cost effectiveness at the margin. I think it is something we debated before, and I would hope we could get perhaps about an hour or less on that one.

We have three amendments by Senator LEVIN on Midgetman, SDI, and MX, and those are all transfer of funds amendments, and I hope we would get a very brief time limit on all three of those.

We have an amendment by Senator HELMS from North Carolina on Minuteman II replacements.

We have an amendment by Senator EVANS from Washington that relates to the N-reactor in Washington State.

We have an amendment by Senator BUMPERS on the so-called man-in-the-hoop amendment relating to SDI and technical considerations on SDI that are important, and I understand the Senator from Arkansas can go on that immediately after this debate.

Mr. BUMPERS. That is correct. I am prepared to go on that immediately after a vote on this if the Senator is ready.

Mr. NUNN. Unless there is someone on that side of the aisle who wishes an amendment immediately after this one certainly we would informally observe mutuality and reciprocity here and move back and forth.

I would like to tentatively plan on going on that one next if the Senator from Arkansas would be ready, which he indicates he will, and the Senator from Virginia concurs.

Then we have an amendment by Senator JOHNSTON from Louisiana on limiting the space-based kinetic kill vehicle, the new part of SDI, the new program.

Senator LAUTENBERG has an amendment we debated last year and voted on last year on religious apparel in the military.

We have a Gramm from Texas amendment on Davis-Bacon. We have a Gramm amendment on service contracts. Those are issues that usually take considerable length of time.

We have an amendment by Senator WEICKER on consistent budgeting. I am not familiar with the details of that one.

We have an amendment by Senator DODD from Connecticut on Panama.

We have a very important amendment by Senator KENNEDY on nuclear aircraft carriers. I know my friend from Virginia is interested on that subject.

Those are what I call 7 blockbuster amendments and 14 less than blockbuster in terms of time, but very important amendments that will consume time.

So we have 21 amendments that, as I view it, on each one of them, we could average 5 or 6 hours' debate on those 21 amendments unless we get a time limit. That is 120 hours just on those.

We have 30 more amendments that I have not listed here, and all of them

could take time, but I do not consider them of this nature.

So if you take an average of 5 hours on those 21 amendments, that is 100 hours, and if you divide that into 12-hour days, that is 8 or 9 more days, and frankly, the majority leader has really given me and the Armed Services Committee about the end of this week and next week.

We have 1 day next week we will not be in which is standing practice. That is Monday. We have another day that we hopefully will be as productive as possible, but since we will be stacking votes, we may have difficulty getting people here.

So we perhaps have 3½ days next week and we have at least 8 days of work, not counting 30 more amendments, and if you add another day or 2 days for that, you have 10 days of work which could stretch this bill out for as long as a month.

So I can only say to the majority leader that is the best estimate I have. If we go on as we are going and if everybody acts in good faith, which we are acting in now, we have no attempt that I see whatsoever to stretch out this bill purposefully or anything of that nature, I think we are beyond that point, and I think we have had splendid cooperation from our colleagues on that side of the aisle in the most recent hours we have been debating this, and so I say to the majority leader it looks to me as if we will spend anywhere from 3 weeks to a month on this bill unless we get time agreements.

The way I see it, we will have to go as many days as the majority leader is willing to go and as late as we can with still leaving room for at least a partial night's sleep so we can come back and have a full day the next day.

I would say to the majority leader it is my recommendation as floor manager, and the Senator from Virginia can speak for himself, but we talked about this a good bit, and I think I speak for both of us, we are willing to be here tomorrow, Monday if necessary. We are willing to stay late tomorrow night. We are willing to be here all of next week and I would anticipate a Saturday session next week following, and if the majority leader so desires—I am not advocating, but if he desires it, I will be here on Sundays, because we had 4 months waiting on this bill.

Appropriations bills have stacked up. The military service is dependent on this bill. The men in uniform are. We are talking about men and women in uniform. We are talking about the Persian Gulf. Pay raises are in here. Special benefits are in this bill. The money for ships in the Persian Gulf, the money for the ammunition, the airplanes, everything is in this bill. So it is of enormous importance, and I demonstrated earlier I thought it was more important even than a Supreme Court Justice, his confirmation hearings, and I do.

So I just say to my colleagues between now and around midnight tonight, we have to know whether we can get time agreements and I am not talking about 6, 7, or 8 hours on these amendments—I am talking about in the 1- and 2-hour bracket—whether we can get time agreements on these key 21 amendments. If we can, then we can give them a projection of a reasonable schedule next week and a reasonable schedule, perhaps even avoiding a session tomorrow. If we cannot, we will be here to 11 or 12 o'clock tonight as far as I am concerned and all of this is subject to the majority leader. Everything I said is subject to his wishes. He has a much broader picture than I do of the Senate and does a splendid job keeping a broader picture in mind. As far as I am concerned, if we do not get time agreements on these 21 amendments, we will be here until about midnight and tomorrow night to about midnight.

And Monday will be up to the majority leader. But I would acquaint him with the fact that I would be willing to be here on Monday. But we will certainly be here the following Saturday and I think Senators ought to all be on notice that is where we stand.

Mr. BUMPERS. Mr. President, I will just say, to avoid a Saturday session, which is very vital to all of us, I would just let the manager of the bill set the time on all my amendments. He can just set the time as to whatever may be appropriate.

Mr. WARNER. Mr. President, the distinguished chairman has stated with specificity what work remains. But when this bill was formulated by the Senate Armed Services Committee, the Republicans took a very great deal of pride in it. With the exception of the one amendment, the Levin-Nunn amendment, we were ready on the bill, not only in the committee but ready to take it to the floor and vote on it as it was.

Most of these amendments clearly are coming from the majority side of the aisle, and we will do our best to deal with them. But we are not piling on amendment after amendment. The majority of the Members on this side of the aisle thinks the bill, with the exception of the one provision, is a very good bill and addresses the needs of the Armed Forces of the United States. We were ready to act on that bill and would have acted on that bill as reported out of the committee had it not been for this one amendment.

Mr. BUMPERS. Will the Senator yield?

Mr. WARNER. Yes.

Mr. BUMPERS. Mr. President, as far as I know, there are no other speakers on this side, with the possible exception of Senator GRAHAM, who might want 5 minutes. If he does, I assume he will be here. Otherwise, we are finished and I will be happy to vote at 11:30.

Mr. WARNER. Mr. President, I thank the distinguished Senator.

It is now 5 minutes to 11. We have been on this amendment for 2 hours. Generally speaking, we have, I think been relatively quiet on this side and allowed this amendment to be presented. Now it is our turn and I am ready on this amendment as soon as I can get the floor to speak on this.

Mr. BYRD. Will the Senator yield?

Mr. WARNER. Yes.

Mr. BYRD. Mr. President, I have discussed this situation with the Senator from Georgia, including the calendar and the overall matter of the heavy work that confronts the Senate in these few remaining weeks before Christmas, and I am fully supportive of the program that he has outlined insofar as it treats the pending business before the Senate.

There is no doubt but that we have worked ourselves into a situation now where we are just going to have to work late nights and work on Saturdays, if need be, and, if need be, come in on a Monday, which gives me the greatest heartburn because I have made a commitment that we would not come in on Mondays. But I cannot foresee every contingency and eventuality that might arise. I have said, barring an emergency, we would not have sessions on Monday.

So, that being the case, I am going to support the distinguished chairman and the ranking member. The ranking member says that they were ready to vote on the bill and there was only one problem area and that was the reason why the bill was held up for so long.

Well, the chairman and I consistently took the position that, even though that problem area was there, we ought to get the bill up and let the Senate work its will and get on with the rest of the bill. And the Senate worked its will on that matter and it could have done that 1 month ago or 2 months ago just as well.

But that is water over the dam now and we have the bill before us.

So, I say to the distinguished chairman that I do not want to be in here on Saturdays, I do not want to be in here on Mondays, I do not want to be in here on Sundays, but it is rather refreshing to have a chairman and ranking member who say: "Let's go against Philip."

That was Demosthenes' rallying cry: "Let's go against Philip." Well, Let's go. Let's go.

Now, can we get an agreement on this amendment that is pending?

Mr. WARNER. Mr. President, I respectfully suggest to the majority leader that the answer would be in the negative, simply because we have not

had a chance to speak on it. I mean, it is just a fact of the matter.

Mr. BYRD. I understood that the distinguished Senator was going to speak.

Mr. WARNER. Yes; but there are other colleagues on this side who wish to address it. I am simply going to lead off with a rebuttal at this time. I know of at least two other Senators desiring to speak.

I will try to make an assessment and advise the majority leader at what time possibly the Senate can reach a vote.

Earlier we did talk. I did not realize the presentation of the amendment would take 2 hours. There was, I realize a hiatus on the occasion of our visitors from Pakistan, which I think was very important.

Mr. BYRD. Mr. President, momentarily I had forgotten the distinguished ranking member was going to speak.

But, aside from that, I had understood from the distinguished ranking member that no other Senators over there are holding up this amendment and they are ready to vote on the bill. Removing the Senator from Virginia and the fact that I did understand he wanted to speak, I would hope, following that, that we can get an agreement on the amendment so that we can make further progress.

I am fully supportive of the Senator from Georgia and I am glad he took the floor at this point early in the day to lay it out right on the table, because Senators all day long will be asking, and have been asking thus far: "What is the outlook for the rest of the day? What is the outlook for a Saturday session?"

Mr. NUNN. Will the Senator yield for a moment?

Mr. BYRD. Yes.

Mr. NUNN. I have told every Senator privately and publicly that we will have no windows today or tonight or tomorrow or tomorrow night. I have told them we will not stay later than midnight tonight unless we are about to finish an amendment and lapse over, because I think that interferes with a full day tomorrow.

But my view is that we have no more windows on this bill for anyone. I have places I have got to go and I know other Senators do.

I sympathize with every case presented. But I have great sympathy for the majority leader, because when you manage a bill out here you get about one one/hundredths of the pressure that the majority leader gets every day. So, my appreciation for the splendid and very difficult and frustrating job to the majority leader grows every time I manage a major bill on the floor of the Senate.

Mr. EXON. Will the majority leader yield?

Mr. BYRD. Yes.

Mr. EXON. An hour ago I was seated in that chair and the offer was made by the introducer of the amendment before us and the principal backers of that for 1 hour, equally divided, to finish up. A statement was made a few moments ago that no one realized it was going to take 2 hours for the presentation of the proponents.

I suggest, and I think I grasp the situation, that we would have had this over with and done with with the dividing of the time. The Senator from Arkansas is ready to divide the time, if we could reach some kind of an agreement. If not, of course, he is not going to restrict his argument.

I just appeal once again to my good friend from Virginia. I do know that there are all kinds of pressures on all of the Senators, including this one. I am leaving tonight because of a family matter that I feel obligated to. You can go on and conduct the Senate without me. But I am leaving sometime tonight. I do not like to miss these important votes or miss taking part in the debate. But we have got to move this along.

I salute the majority leader and the leader of our committee for keeping our feet to the fire on this thing. I hope, on this amendment and each and every amendment that comes up, that we could have an understanding that we should have some kind of a time agreement, because without that we are not going to get anywhere and we are going to be bogged down here until midnight tonight, midnight Saturday, and probably midnight Monday. I appeal for some reason so we can get this bill moving.

Mr. BYRD. Mr. President, I also should state that Mr. HATFIELD told me earlier that we would be willing to enter into a time agreement.

May I also express my thanks to the able ranking member who has been very cooperative with the leadership.

I also commend the attitude taken by the distinguished Senator from Nebraska. He has to go because of family reasons. He has to go and he is not saying, "Let's hold up the Senate." He has to make that choice.

I again want to thank the chairman of the committee. It is like a breath of fresh air for me to see a chairman come to the floor and say, "We have a tough bill and we are going to stick on it."

Usually it is ROBERT C. BYRD who stands up here and who has to make the statements and earn, at least temporarily, the enmity of my colleagues. And I know their frustration.

Mr. NUNN. I think the majority leader is telling me in a very subtle way that I am earning the enmity of our colleagues; he is sharing that with me.

Mr. BYRD. No. I am complimenting him. I wish other Senators would have a dose of what the chairman and ranking members have here, in dealing with a difficult bill.

Mr. WARNER. I appreciate all the sentiments. We will do our best. Can we get started?

Mr. BYRD. Mr. President, I get the message and I am glad the Senator is giving me that message. I am going to take my seat and I hope all Senators will have heard the Senator's message.

Mr. BUMPERS. Would the Senator from Virginia like to make it 50 minutes to your side and 10 minutes to our side?

Mr. WARNER. I cannot at this time indicate when it will come to a vote.

Mr. BUMPERS. We spent 20 minutes talking about how urgent it is.

Mr. WARNER. The debate will be significant and persuasive.

Mr. BUMPERS. Does the Senator from Virginia have a question?

Mr. WARNER. Not one, not two, but several.

I thank the distinguished majority leader, members of the committee. They have made a case. We know we have to move on. I will do the best I can.

Mr. BYRD. This might help a little bit. I want to help——

Mr. WARNER. I know that.

Mr. BYRD. I hope we do not go on too long. I may change my view as to how I will vote on this amendment.

Mr. WARNER. That is a very subtle and important message and I take it to heart.

The PRESIDING OFFICER (Mr. BREAUX). The Chair recognizes the Senator from Virginia.

Mr. WARNER. I thank the Chair.

Mr. President, our distinguished colleague from Arkansas said, and I quote, "the Russians ain't dumb."

I say to my colleagues in the Senate, respectfully, neither is this Chamber dumb. I do not believe we are going to adopt the amendment that is pending for these reasons.

First, I am not in any way able to determine what it is the amendment seeks to achieve.

It is drawn in the form of two parts. It is like a fishnet being cast on the whole Persian Gulf area. Because if it is the objective to address the issue of removing the Armed Forces from the Persian Gulf area, does that include the Navy that has been there for 40 years? This Nation has had a presence in the gulf for 40 years. The amendment catches that standing naval force.

Mr. President, if I may just finish and then I will propound it in the form of a question.

Mr. President, this Nation has worked with a number of Gulf States, primarily Saudi Arabia, to provide AWACS warning systems, absolutely essential to the preservation of the peace in other Gulf States.

Is this amendment designed to bring to a cessation that military activity by the forces of the United States, which has been so valuable to maintaining peace?

Mr. President, our naval forces, although stretched primarily in terms of carriers, now have a presence in the Indian Ocean. Those fleet units in the Indian Ocean are directly or indirectly supporting the men and women of the Armed forces in the Persian Gulf area at this time. This amendment would cast out the net and could easily be interpreted as requiring the President to bring those forces back into other operating areas.

I ask drafters of this amendment to stop and look at the language. First, let us address the War Powers Act, section (b) and I quote:

Within 60 calendar days after a report is submitted—

All right, the President has not submitted that report—

or is required to be submitted pursuant to Section 4(a)(1),

That is what we are endeavoring to do here this morning, to trigger such a requirement—

* * * whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted) * * *.

That is what we are doing here today, endeavoring to put on this piece of legislation a requirement that triggers the War Powers Act. So we now go to the amendment. The amendment states:

The requirement for the transmittal to the Congress of the report described in Section 4(a)(1) of the War Powers Resolution shall be deemed to apply to the escort, protection * * *

I point out that escort protection involved the AWACS early warning planes; it involves the fleet units as far away as the Indian Ocean and the Gulf of Oman.

or defense of any vessel which has been registered under the United States flag and which as of June 1, 1987 was owned by the Government or nationals of any country bordering the Persian Gulf.

Mr. President, I ask the drafter of the amendment to address this question. I think I stated it quite succinctly.

How big a fishnet? What is to be caught and brought under section (b) of the War Powers Act?

Mr. BUMPERS. Senator, I think your question is an appropirate one and I am most happy to respond to it.

The War Powers Act, as you know, says that within 60 calendar days—it says, first of all, the President will report to the Congress. And he will report to the Congress why troops, ships, planes, et cetera, Armed Forces, have been introduced into a hostile environment, and subsection (b) of section 5 says:

Within 60 calendar days after the report is submitted * * * the President—

Unless Congress, of course, it is understood, of course, unless Congress agrees with such introduction of such forces, it says:

The President shall terminate any use of Armed Forces with respect to which such report was submitted * * *.

It does not say that he will withdraw American forces from the Persian Gulf. It does not say we cannot fly AWACS. It does not say that we cannot even have 41 ships there, Senator; which is about 7 times the normal number of ships.

It says he will terminate the use of those ships with respect to such report. The report being that we are escorting Kuwaiti tankers.

Mr. WARNER. Now, Mr. President, let us turn to the balance of section (b).

After the report is submitted and this action is triggered, the following steps have to take place.

No. 1, "unless the Congress has declared war . . ." and I ask my good friend from Arkansas, is anyone shooting at us today? Against whom do we declare war? Is that an option, in your judgment, a declaration of war, given the circumstances in the gulf today; given the circumstances in the gulf in the past 60 days——

Mr. BUMPERS. No.

Mr. WARNER. Given the circumstances where we can see, clearly, forebearance by the Iranians from direct engagement with American forces?

What are the circumstances under which we would declare war? Is that an option?

Mr. BUMPERS. The Senator is asking me whether I would vote for or against war if tomorrow is a clear day or a bad day or if an Iranian gunboat sinks an American warship? That is something Congress would have to deal with at a specific occasion, pursuant to a specific series of events.

As of this moment, here is one Senator that is not prepared to declare war. I doubt seriously that any other Member of this body is. That is why we are here. We are trying to avoid the necessity of such action.

Mr. WARNER. Nevertheless, once this act is triggered, this sequence of options opens; and I agree with my good friend——

Mr. BUMPERS. Senator, if the Senator may please be fair with me on this. What subsection (b) of section 5 says is that the President will terminate the use of our Armed Forces with respect to the report he has filed. Unless Congress has declared war.

We all understand that now. You may go ahead. There are a series of other circumstances.

Mr. WARNER. I thank the Senator.

The next option is an act of specific statutory authorization for use of such U.S. Armed Forces.

In what form would that authorization likely be?

Mr. BUMPERS. Senator, if the Senate and the House both passed this amendment and the President signs it, which he is not likely to do—let us assume that this amendment today becomes law—the President then must comply with the terms of this.

Mr. WARNER. Right.

Mr. BUMPERS. And, again, to be repetitious, he must terminate the use of America's Armed Forces with respect to the report he has given us unless we have declared war or unless Congress, within the 60-day period, has debated our policy and said, "Mr. President, it is OK. Stay there if you want to under the terms of your report."

That is an option. It is left to the Congress to debate it. It is an option which the Congress has not yet debated. That is, do we not approve of the use of American forces for this purpose?

If this is adopted, Congress will still debate that issue.

Mr. WARNER. Now, Mr. President, let us think about that situation, if the amendment becomes law and Congress commenced debate for some 60 days. In what position does that leave our allied forces and other friends who have come into the gulf region, providing their contribution toward achieving a containment of that unfortunate war and even the termination of that war?

Let us say we triggered the act and we begin the 60-day debate. The United Kingdom is participating with five combat ships, two support ships, four minesweepers; France, five combat ships, three support ships, and five minesweepers. Italy and other nations—I could go on and list more vessels deployed.

The Senator from Arkansas is fully aware of this. What would be the posture of our allies if this body were to say this whole policy is under debate for 60 days while Congress debates the propriety of United States participation in this area? What posture does that put our allies in?

Mr. BUMPERS. Let me answer this way. When Great Britain sent minesweepers to the gulf, is the Senator aware of what Mrs. Thatcher said the reason was?

Mr. WARNER. This Senator has followed Mrs. Thatcher's statements.

Mr. BUMPERS. First she said, "No, thanks."

Mr. WARNER. Mr. President, she did not say no.

She sought the steadfastness and determination of this President to commit our forces in the cause of peace and stability in that region. It was that leadership that brought about this allied participation. It is that leadership that you are now

going to challenge under the War Powers Act and throw into a state of uncertainty for 60 days.

Mr. BUMPERS. All I am saying in this amendment is, "Mr. President, please comply with the law," which is so patently clear to anyone who reads English. Mrs. Thatcher did not say "We are sending our minesweepers there because the President of the United States has been steadfast."

She said, "We are sending our minesweepers to escort British ships."

If she wants to leave the minesweepers there to escort British ships after we impose the War Powers Act, she and all our allies have a right to stay there. I am not telling her to take her ships out. The War Powers Act has nothing to do with Great Britain. She could reflag and escort, so far as I am concerned.

Mr. WARNER. Given this very complicated situation in the gulf, is the Senator suggesting that the United States, one of the two superpowers, is going to pull out under the war powers resolution, abdicate its responsibility, and allow the other nations to fill that hiatus? Is that a realistic option?

Mr. BUMPERS. Do you think the Soviet Union, leasing three or four tankers to the Kuwaitis in an arm's length transaction for money represents Soviet domination? Incidentally, this is exactly the reason the Senator from Alaska, a cosponsor of this amendment, said if we are going to do this, let us use American ships. We have tankers galore laying around here idle. Why do we not do what the Soviets did?

"If you want us to carry your oil, put the oil in our ships. We will lease you all you want."

Does the Senator consider three Soviet tankers being leased to the Kuwaitis, when hundreds of tankers pour in and out of that gulf every day, does he think that makes the Persian Gulf a Russian sea?

Mr. WARNER. Mr. President, I would like to answer my good friend's remarks on the potential participation of the Soviets.

Look at Russian history. Go back to Peter the Great. That nation has long coveted a warm water port. They are now waging a brutal war in Afghanistan, one of the objectives of which may be to achieve a greater presence in that area.

Last night, as I mentioned earlier to the distinguished chairman of the Foreign Relations Committee, a small group of us had an opportunity to speak to Soviet Foreign Minister Shevardnadze, just a quiet roundtable discussion. I asked him the question, Is it not in the interests of the Soviet Union and the United States jointly to contain that war and hopefully to bring about peace in that region and a termination of the hostilities. His response, unequivocally, was yes, but he said we should do it in the United Nations forum.

I concur. Our President, through our representative, is working diligently. One United Nations resolution has recently been passed. We are actively pursuing a second resolution on sanctions.

If we were to launch ourselves into the situation of a 60-day hiatus under the War Powers Act, where this body and the Congress as a whole is debating the propriety of the policies of our Government, it would simply undercut the President right in the middle of the United Nations and Security Council negotiations aimed at bringing about a cessation of hostilities in the Iran-iraq war.

I do not think three tankers is the full measure of the potential participation by the Soviet Union in this very important area of the world.

Mr. BUMPERS. Does the Senator think the United Nations will disband if this passes, if we cause the President to invoke the War Powers Act, that the United Nations will stop debating this issue on a resolution calling on Iran and Iraq to cease hostilities?

Mr. WARNER. I think, quite frankly, that if we get into the situation, the Congress would see the wisdom—I am confident this body would—see the wisdom of supporting the President of the United States and his actions today in the Persian Gulf.

Mr. BUMPERS. The Senator knows the full House has voted by a vast majority to discontinue this policy.

Mr. WARNER. That is correct. But when it really comes down to making the decision and directing the course of our forces, I do not believe that we——

Mr. BUMPERS. Do you believe the American people understand this policy?

Mr. WARNER. My response is, not fully; but I doubt if they had the opportunity to vote that they would compel the President to withdraw from that area. They would study it and in due course reach the right conclusion.

Mr. BUMPERS. Every poll I have seen shows the American people are overwhelmingly opposed to this policy.

Mr. WARNER. We have both had many years of experience with polls. Polls are one thing. A concrete decision and a vote is another. When we get down to the voting, the people of this country would be supportive of our President and see the wisdom of having an American presence in the gulf, a presence which is there to provide peace and stability.

Now I would like to add a note about imminent danger pay. The Defense Department has said that individuals serving in the designated imminent danger zone will qualify for increased pay.

The amendment as drafted would use this as part of the basis for triggering the provisions of the war powers resolution.

The legal standards governing this special pay determination, and the broader language and history of this pay authority, allow it to be available in situations where the war powers resolution does not apply.

Presently, five other areas have been designated, at various times, for this special pay, without Congress making use of the War Powers Act. These five are El Salvador, Lebanon, Sudan, Peru, and Colombia.

This is an important point. The special pay authority applies where there is a "threat of physical harm or imminent danger." But the War Powers Act applies only when imminent involvement in hostilities is clearly indicated.

Mr. President, I do not wish to monopolize the floor. I hope to return to this matter. I have further questions for my good friend from Arkansas. I see on the floor the distinguished ranking member of the Foreign Relations Committee, and I yield the floor.

The PRESIDING OFFICER. The Senator yields the floor. The Senator from North Carolina seeks recognition and is recognized.

Mr. HELMS. Mr. President, I thank the Chair, of course. I have just a few observations.

The Senate is now engaged in chasing rabbits, and irrelevant rabbits at that. Every Senator in this body knows what is afoot. We can have protestations, pious or not, that the will of the Senate must be worked. I agree with that. But every Senator also knows that this bill is going nowhere in terms of being signed by the President into law. So what is being constructed here is veto bait.

Now, I said on this floor the other day, and I reiterate, that if Senators will be willing to lay aside the Levin-Nunn amendment as well as the amendment before us now, this bill could be passed by the Senate by 6 o'clock tonight. Senators will know that the inclusion of Levin-Nunn and the amendment by the distinguished Senator from Washington [Mr. ADAMS] means prolonged debate, many amendments that would otherwise not be offered at all, and eventually a veto by the President of the United States. And there are votes, I believe, in this Senate to sustain that veto.

So what are we concerned about? Are we really concerned about defense authorization or are we really concerned about 1988? I think it is the latter.

Now, it may be of interest to the distinguished Senator from Arkansas that I agree with him in many of the things he has said about the State Department's project in the Persian Gulf. I have said earlier and I say

again that I believe there is a possibility that the architects of this Persian Gulf policy down at the State Department overdosed on dumb pills when they conceived this plan to reflag Kuwaiti tankers. The plan has no safeguards, and no answers have been provided questions such as the distinguished Senator form Arkansas has raised.

This is certainly a controversial policy involving so many aspects that it is by no means a clearcut issue. I wish it were otherwise. I believe if there had been a little consultation by the State Department prior to persuading the President to sign off on this Persian Gulf plan, we might have avoided some of the pitfalls.

But all of that, Mr. President, is a fait accompli and we have to deal with reality as it is now, not as we might otherwise wish it to be. But whether one agrees with the reflagging policy, the issue is a fait accompli. I have had a lot of reservations about it and I have stated them both privately and publicly.

But the real issue here, now that this amendment is before us and now that the project in the Persian Gulf is in progress, is whether the United States really wants to be the kind of nation which cuts and runs from a commitment. It is not essential that you agree with the commitment. What we are talking about is the perception and the principles of this country. The question is whether we want America to play a leadership role in the world or whether we want to be reduced to the kind of second-rate status held by the European nations.

There is also, of course, the question of how do you unscramble this egg in the Persian Gulf. It cannot be done unless you want to cut and run on the one side or stick by the commitment on the other. That is the choice.

Now, the goal of this amendment—and I hope that we will not chase the rabbit so far that we lose sight of what the intent of the amendment is—the goal of this amendment is to terminate our commitment in the Persian Gulf under the so-called War Powers Act.

Now, Mr. President, I was in the Senate at the time the War Powers Act was enacted and signed into law. I was a new boy on the block at the time. I had been elected in 1972 and came to the Senate January 3, 1973. On July 20 of 1973 the War Powers Act was approved by the Senate. I remember, not being a lawyer myself, going to my distinguished colleague, Senator Sam Ervin, and saying, "Senator, I need some advice from you."

He said, "Fine. Sit down."

I said, "I have studied this proposed War Powers Act and just as a layman I do not believe it is constitutional. You are a constitutional authority, sir, and I would like your opinion."

I remember his smiling at me and saying, "JESSE, you may not be a lawyer, but you can read the English language and you know something about the constitutional separation of powers." And then he said, "You're exactly right; it is, on its face, unconstitutional." And he said, "If it becomes law, I do hope that it will be tested by the executive branch."

Now, only three Members of this body today were in the Senate then and voted against the enactment of the War Powers Act. There were 14 Republicans and 4 Democrats, one of whom was the distinguished Senator from North Carolina, my good friend, the late Sam Ervin. The three Senators who voted against the War Powers Act were Senator MCCLURE, Senator THURMOND, and I. All the rest have gone or have passed away. I shall always be grateful for the advice and discussion that Senator Ervin gave me about the War Powers Act at the time of its enactment.

Since 1981, when Ronald Reagan became President, I have many times urged the administration to test the constitutionality of the War Powers Act. Had that been done, there is no doubt in my mind about how the Supreme Court would have ruled.

But like on so many other matters, the administration, the Reagan administration, which I support, failed to do what I believe to be essential. We would not be here discussing this amendment, in my judgment, if the administration had challenged the constitutionality of the War Powers Act. It did not do it. And therefore, we have had this prolonged, tedious, almost irrelevant around-the-clock consideration by the Senate of a bill and amendments thereto which otherwise, would have been completed weeks ago, if not months ago.

But under the so-called War Powers Act, if U.S. Armed Forces are introduced "into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances," the President is required to submit a report to Congress within 48 hours outlining the circumstances necessitating the introduction of U.S. Armed Forces, the constitutional and legislative authority under which the forces were introduced, and the estimated scope and duration of the hostilities or involvement.

Within 60 days of the submission of this report, the statute requires the President to terminate the use of U.S. Armed Forces unless Congress has either declared war or has enacted a specific authorization, or has extended the 60-day period by law, or is physically unable to meet as a result of an armed attack on the United States.

Just the mere reading of that spells out and emphasizes the intrusion by the Congress into the clearly constitutional prerogatives of the President of the United States. The President should consult with Congress. But I do not think his hands ought to be tied. I think the Constitution clearly draws that line of demarcation between the Executive's responsibility and the responsibility and authority of the Congress of the United States. And I feel that way about this no matter who is President. I for one have never and will never challenge the constitutional authority of a President, regardless of his party, regardless of his philosophy, because if the Constitution of the United States means anything at all—and yesterday and in the days preceding we spent a lot of time describing the greatness of this document—then the separation of powers must be preserved.

But the War Powers Act, Mr. President, as a mere legislative act, seeks to take away authorities to conduct foreign policy which the Presidents of the United States have properly exercised under the Constitution for almost two centuries; section 5(b) of the act specifically would deprive the President of his constitutional authority as Commander in Chief during a period of hostilities after a period of 60 days if the Congress remains silent on the matter.

The idea that Congress can by silence or inaction deprive the President of a fundamentally expressed constitutional power, even in times of national emergencies, I might add, is incompatible with the system of separation of powers established by the Founding Fathers.

The only way in which the constitutional powers of a branch of the Government can be altered is by amending the Constitution. Indeed, attempts by Congress to modify its constitutional relationship with the executive branch by legislation have been firmly rejected by the U.S. Supreme Court in the past. (*Myers* v. *United States*, 272 U.S. 52 (1926)).

REFLAGGING KUWAITI VESSELS DOES NOT TRIGGER WAR POWERS ACT

To invoke the War Powers Act is tantamount to saying that the use of the U.S. Navy to protect reflagged vessels is tantamount to introducing United States Armed Forces into hostilities or into a situation where involvement in hostilities is imminent.

However, the reflagging of Kuwaiti vessels by the United States does not introduce our Armed Forces into hostilities or into a situation where involvement in hostilities is imminent. With respect to the Iran-Iraq war, the United States is a neutral party, and uninvolved in the hostilities.

Neither Iran nor Iraq has declared war on the United States, and the one unprovoked attack on the United States—the unfortunate attack on the U.S.S. *Stark*—appears to have been—

indeed has proven to have been an isolated, and accidental attack.

Reflagging ships owned by Kuwait—which is also a nonbelligerent in the war—does not change our neutral status. Under international law governing the operation of armed conflict, neutral ships have the right of free passage on the high seas unless a formal blockade exists. Thus, both the United States, and the emirate of Kuwait are entitled to the freedom of navigation in the Persian Gulf.

The reflagging operation also does not currently bring us into hostilities. Kuwait is nonbelligerent, and is not involved in hostilities. The reflagging of Kuwaiti vessels does not, in itself, place United States Armed Forces into hostilities.

Some might point out that Kuwait supports Iraq in the war financially and suggest that this involves Kuwait in the hostilities. However, providing support to a belligerent does not make a country a belligerent itself, nor necessarily involves it in hostilities.

In addition, the reflagging operation—and the protection provided for this operation—does not signal that hostilities are imminent. Despite the fact that four nations—the United States, Great Britain, the Soviet Union, and France—have been committed to protecting their flagged vessels in the gulf for some months now, there has been no attack by Iran on any combatant ship.

And for good reason—the best deterrent in that part of the world is a strong and determined military presence. In fact, the best way to invite aggression is to indicate a lack of will and resolve—exactly the message that this amendment seeks to send to the Ayatollah.

Furthermore, the Ayatollah has no interest in involving foreign powers in hostilities. Indeed, such involvement in the gulf war works exactly opposite to Teheran's plans. The Ayatollah's long range goal is to take control of the oil reserves of the Arabian peninsula—so as to hold the West hostage, and to finance his radical movement. Involving foreign powers in hostilities prior to any capitulation on the part of Iraq would make this goal of controlling these oil reserves all but unobtainable.

KHOMEINI AND THE THREAT TO WESTERN INTERESTS

The United States has vital and longstanding interests in the Persian Gulf region. For nearly 40 years, American policy in the region has sought to protect the flow of oil, provide support for moderate Arab States, and contain the spread of radical forces—including the Soviet Union.

Over this period, there has been widespread bipartisan support in Congress for this policy.

The need to maintain this policy, however, is underscored by the fact that 70 percent of the world's proven oil reserves are in the gulf region with the enemies of the industrialized nations heavily dependent on this oil.

On a percentage basis, the United States is not nearly as dependent upon oil shipped through the Persian Gulf region as are friends such as Japan and France. But regardless of who is more or less dependent on this oil, the fact remains that if the production of oil is disrupted anywhere, prices rise for all consumers, and all Western economies are adversely affected.

This vital economic interest is directly threatened by the Ayatollah and his brand of radical Islamic fundamentalism.

It seems like every 30 or 40 years, passionate political movements sweep through the Middle East. In the 1950's and 1960's, it was Pan-Arab nationalism led by Egypt's Nasser. Today, it is Islamic fundamentalism—or Khomeiniism.

Khomeiniism is an ideological-political movement which arouses the passions of the downtrodden of the Islamic world—and directs these passions against the West, and those Arab leaders who deal with the West. It is a movement which knows no geographic boundaries. It presents a direct military threat to those Arab countries in the gulf region, and a direct political threat to other Arab countries—especially those which are inherently unstable.

If Khomeini were to win his war with Iraq, and then were to undermine or confront the gulf states—including Saudi Arabia—it is conceivable that a large percentage of the region's oil reserves could come under the control of Teheran's radical regime.

This is the bottom line of the Ayatollah's strategy—to take control of the oil reserves under the Arabian peninsula in order to hold the rest of the world hostage and to finance his revolutionary movement and terrorists.

And the best way for this body to help promote Khomeini is to support this amendment taking Commander in Chief powers away from the President in the Persian Gulf.

Now the State Department will tell you that the reason we are reflagging Kuwaiti tankers is to protect the freedom of navigation. That's exactly what the Arab States—that are fearful of being seen as too close to the United States—want us to say. But the fact of the matter is that the main reason we were asked to come into the gulf was to send a signal to the Ayatollah that his aggression can only go so far.

I'm not certain the reflagging scheme was the best way to send this signal. But the fact is that the operation is underway. And by the way, let me point out that Congress was unable to come up with any realistic alternative for protecting our interest in this region.

EFFECTS OF ADAMS AMENDMENT

But as long as this operation is underway, it would be a grave error for our country to pull out—which is what the ultimate effect would be of this amendment. There is more at issue in the gulf than oil and Khomeini. Rather it has become a question of whether or not America can carry out its world leadership role.

Throughout the world and especially in the Middle East, the strength and value of the American commitment is being questioned. Our ability to influence world events—in all parts of the world; including Central America—is in many ways determined by the perception of our strength and our resolve.

Any back-peddling on our commitment in the Persian Gulf, and indication of wavering resolve can only hamper our country's ability to pursue our interests overseas, and reduce us to the kind of second-rate status held by the European nations.

But that is exactly what this amendment represents—a back-peddling on our commitment in the Persian Gulf. Invoking the War Powers Act provides a 60-day grace period afterwhich our military presence in the gulf would have to effectively cease.

Thus, over the 60 days following enactment of this proposal, no one would be certain of our commitment in the gulf. No one would be certain of the President's control over U.S. armed services or U.S. foreign policy. In fact, the uncertainty of our commitment would only invite hostilities directed toward our military—not deter them.

And of course, if Congress were, for some reason, to fail to ratify our military presence, we would have to cut and run from the Persian Gulf. The American commitment would lose all its value. The United States would be perceived as weak and as lacking resolve, and our ability to pursue our interests overseas would be hobbled. America would be reduced to the kind of second-rate status held by the European nations.

So that is what we are talking about here today. Whether or not the United States is to be a world power.

Mr. President, the War Powers Act is unconstitutional. Even if it were constitutional, the "imminent hostilities" which were to trigger this act are not present. And to call for automatic implementation of this act would cause our resolve to come under question and would hamper the President's ability to conduct foreign policy.

Let me say again that I hope we can get on with the business of the Senate and stop chasing rabbits. Not for 1 moment would I presume to dictate to the manager of the bill or anybody

else. But I hope there will be a motion to table the amendment of the distinguished Senator from Washington, which is now pending. I have the greatest respect for him. But I hope that we will not further compound the constitutional situation that exists already with respect to the War Powers Act.

Mr. President, I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator yields the floor.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, the managers of the bill, together with the majority and Republican leaders, have been working on the possibility of bringing this issue to a vote. Am I not correct, Mr. Leader, that we have now been informed the Secretary of State will join us at the hour of 12:30 for the purpose of the briefing in the Senate?

Mr. BYRD. Yes. I talked with the Secretary of State earlier today. And he indicated that he could spend no more than 45 minutes in that briefing. He indicated that the briefing will occur at 12:30 to 1:15.

Mr. WARNER. Mr. President, suppose then we would indicate the possibility that the Senate would start its vote on this matter at, say, 12:15. It would be my intention, as I stated earlier, to move to table at 12:15. There is present on the floor the distinguished Senator from Indiana who desires to address the issue; and the ranking member of the Foreign Relations Committee has concluded his presentation. I know the Senator from Georgia also wishes to have a few statements on this. Do I see the Senator from Georgia desiring to say something?

Mr. NUNN. I would defer to the majority leader. I would like to say a few words about this while the Senator from Arkansas is on the floor and others are here. But I will not interrupt.

Mr. WARNER. It seems to me that we could just sort of allocate this time and go ahead and have a vote at that time. This would enable the Senators to speak and then the Senate, if I may respectfully request, could go into recess out of courtesy to the Secretary, and allow Senators to attend the briefing.

Mr. BYRD. All right. Is the able distinguished Senator from Virginia recommending that the Senate stand in recess?

Mr. WARNER. From the hour of 12:15 until 1:30. That will enable the Senators to attend the briefing.

Mr. BYRD. All right. The Senator would move to table at 12:15. Very well.

Mr. WARNER. I see the Senator from Indiana about to say something.

Mr. QUAYLE. Would the Senator yield for a question? I would like to have about 15 minutes to address this issue.

Mr. WARNER. If it is all possible.

Mr. QUAYLE. I have not spoken at all today. I hope the sponsors of the resolution will be on the floor to maybe respond to what I would have to say or engage in some colloquy. I do not want to unreasonably delay this thing. This is a very important issue, and I have not spoken. You have spoken very eloquently, and the Senator from North Carolina has.

Mr. WARNER. I think all of this is achievable if we start right now.

Mr. BYRD. It might pose a problem if the order is for the Senate to recess at 12:30 and the Senator makes his motion at 12:15 and that rollcall vote is not completed, and the Chair announces the results of the vote. The Senate would continue that vote and it will have an order to stand in recess.

Mr. WARNER. I see the majority leader's point. Why do we not just indicate that the vote would start at 12:15 and continue until such time as the majority leader determines to end the vote? I am trying to accommodate as many Members as possible. The understanding would be that there would be no further transaction on the pending bill subsequent to the vote, and that the Senate would stand in recess at whatever time the leadership agrees.

Mr. BYRD. Would this be agreeable: that the Senate stand in recess upon the disposition of the question until 1:30 p.m. today?

Mr. WARNER. And the question would be put in the form of a motion to table, by the Senator from Virginia, at 12:15.

Mr. BYRD. Does the Senator intend to move to table the underlying amendment or the amendment in the second degree?

Mr. WARNER. Mr. President, I will first talk to the Parliamentarian.

Mr. HATFIELD. Mr. President, I think the procedure we used in submitting this amendment is fairly obvious, and it seems to me that whatever the tabling motion is, we should handle it as a single unit.

Mr. BYRD. The underlying amendment.

Mr. HATFIELD. Because I think we need only one vote on this issue.

Mr. BYRD. Yes. That would carry everything.

Are Senators ready for me to make that request?

Mr. President, I ask unanimous consent that the distinguished Senator from Virginia be recognized no later than 12:15 to make his motion to table; that upon the disposition of that vote and its announcement by the Chair and the tabling of the motion to reconsider—and I would ask unanimous consent that there be no time on a motion to reconsider—that upon the disposition thereof, the Senate stand in recess until the hour of 1:30 p.m. today.

Mr. WARNER. I am informed by the Republican leader that he concurs in this proposal.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the majority leader?

Mr. HATFIELD. Mr. President, reserving the right to object—I did not mean to interrupt the Senator from Virginia.

Mr. WARNER. I was about to say that I had heard no comment on this side, but I now hear some comment.

Mr. HATFIELD. Mr. President, reserving the right to object, I would like to ask a question: Between now and the time the motion is put, we have approximately 45 minutes. How will that time be handled?

Mr. BYRD. We have 30 minutes.

Mr. HATFIELD. 12:15?

Mr. BYRD. Yes.

Mr. HATFIELD. Between now and 12:15, the time of the motion of the Senator from Virginia, how will the half-hour be handled?

Mr. BYRD. What is the intention of the Senator?

Mr. WARNER. Mr. President, I had not indicated any particular preference. I do not know whether you want to put this time under control or allow comity among Senators for a reasonable time to speak.

Mr. QUAYLE. I want to speak approximately 15 minutes. If we get into any kind of colloquy or discussion about some of the things I have to say or questions I raise, we may go beyond that. It may not. There may not be any discussion. That is all I am asking for. If there are others who want to speak with any degree of length and have any kind of discussion, you are jamming this into a fairly tightly constricted timeframe of 30 minutes.

Mr. HATFIELD. Mr. President, I, too, would have hopes of closing on our amendment, for a period of 10 minutes or so. But now we are close to a half-hour between the Senator from Indiana and my interest in this. It seems to me that we ought to have some way to divide the time so that people may be heard.

Mr. BUMPERS. Mr. President, will the majority leader yield for an observation?

Mr. BYRD. I yield.

Mr. BUMPERS. We have 30 minutes. We spent 5 minutes talking about this. It occurs to me that the Senator from Indiana wants 15 minutes, and the Senator from Virginia is willing to let him have that. The Senator from Georgia wants 5 minutes. That takes us to 5 after. That will leave 10 minutes. Can we have that 10 minutes equally divided for both sides to close? Is that a fair proposal?

Mr. WARNER. We were discussing starting at 12:30, and that gives the Senator 5 minutes.

Mr. BUMPERS. Start the vote at 12:30?

Mr. WARNER. Yes.

Mr. BUMPERS. I thought the briefing was going to start at 12:30. That is going to cause Senators to be late for what a lot of people think is a pretty important briefing. But I am flexible. I am here until the vote is over.

Mr. BYRD. I wonder if this might resolve the matter:

Mr. President, I ask unanimous consent that the distinguished Senator from Virginia be recognized at no later than 12:30 to move to table; that immediately upon the making of the motion, the Senate stand in recess until the hour of 1:30, at which time no quorum call will be in order, and that the Senate proceed immediately to vote on the motion to table.

The PRESIDING OFFICER. Is there objection?

Mr. QUAYLE. Mr. President, reserving the right to object——

Mr. BUMPERS. Mr. President, reserving the right to object——

Mr. QUAYLE. How is the time to be allocated? That is the difficulty. I have been in my office. I had some other engagements. Just looking at the RECORD, much more has been talked about on the side of the proponents of the resolution, which is fair. They proposed it and have four cosponsors. Some of us are violently opposed to this. Getting it down to 15 minutes is an abbreviation of what I had intended to take.

Mr. BYRD. Will this be agreeable?

The time to be equally divided between Mr. NUNN and Mr. WARNER, and they can give time back and forth. I am sure they will do this fairly to all Senators.

Mr. BUMPERS addressed the Chair.

Mr. HATFIELD. Mr. President, reserving the right to object——

Mr. BUMPERS. Mr. President, I do not want to get rhapsodic about this agreement.

Mr. BYRD. The time to be under the control of Mr. BUMPERS on this side.

Mr. BUMPERS. Mr. President, I have a real problem with this moving to table and then coming back to vote after the briefing. I would much prefer to vote immediately at the end of the debate.

Mr. BYRD. I did not understand the Senator.

Mr. BUMPERS. I understood that the unanimous-consent request was that the motion to table would be made and then we would have the briefing and then come back and vote. I must respectfully object to that.

Mr. NUNN. May I suggest a possible course, if the Senator will yield? Begin to vote at 12:35, which gives us 35 minutes. Senators desiring to be at the briefing will vote. We do not start the briefing on time, anyway.

Mr. WARNER. This Senator has to be in two places at the same time.

Mr. NUNN. I have seen the Senator do that many times. [Laughter.]

Mr. WARNER. In this case, I do not desire to do it. I want to be in the well to discuss with my colleagues the importance of this vote, and I have already indicated to the Secretary of State that I will be present at the briefing. So I cannot accede to that proposal.

Mr. BYRD. Mr. President, let me make this request, that the distinguished Senator from Virginia be recognized at 12:30 to make his motion to table, that the time be divided and controlled between Mr. BUMPERS and Mr. WARNER and that upon the return of the Senate at the hour of 1:30 p.m., notwithstanding the fact that no debate is allowed on a motion to table, that there be 10 minutes at 12:30 to debate that motion to table and that time be equally divided.

Mr. BUMPERS. If the leader will yield for an observation, that is not my problem. I just do not like that interim period to vote on this. I do not want any additional time unless someone makes some wild charges that I feel have to be responded to. I do not intend to speak any further. And I see the look on the face of the Senator from Indiana, and I suspect I will make that decision later. I say that facetiously of course, with all due respect to my good friend from Indiana.

We have been talking for 10 minutes how to get this thing done. I am not asking for additional time except a minute or two to respond to something that is patently unfair.

I would like to vote sometime between now and 12:30 or at 12:30. I do not understand why that is such a big problem. He wants 15 minutes and the Senator from Georgia wants 5 minutes. Let us start voting at 10 after.

Mr. WARNER. Mr. President, the Senator from Arkansas knows full well that during the course of the debate it is important for those who have taken an active role, and primarily the manager, be available to address questions of Members.

This Senator respectfully asks the opportunity to attend the briefing of the Secretary of State. I simply cannot be absent from the Chamber at that time.

Mr. BUMPERS. Mr. President, in the spirit of friendship for my good friend from Virginia I will not object. We will go ahead and I will agree to the leader's first unanimous-consent request. He moves to table at 12:30. We come back at 1:30 and vote, with no debate.

Mr. BYRD. I make that request.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? Hearing none, it is so ordered.

Mr. BYRD. I thank all Senators.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HATFIELD. Do I understand we are now under controlled time until 12:30 and the time is equally divided under the control of the Senator from Virginia and the Senator from Arkansas?

The PRESIDING OFFICER. Under the unanimous-consent request it was not asked by the majority leader.

Mr. BYRD. Mr. President, I ask unanimous consent that the time be divided how?

Mr. WARNER. Equally between Senator BUMPERS and myself.

Mr. BYRD. Equally divided between Mr. BUMPERS and Mr. WARNER.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Arkansas.

Mr. BUMPERS. Mr. President, one additional question of the leader and the distinguished Senator from Virginia. If everybody has run out of time by 12:15, would it be permissible under the agreement for him to go ahead and move, knowing he will finish the vote before he goes to the meeting?

Mr. BYRD. No, we would not want to split that because of the reasons that have been stated by Mr. WARNER.

Mr. BUMPERS. OK.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, I yield such time as the Senator from Indiana may require providing it does not exceed 12 minutes.

The PRESIDING OFFICER. The Senator from Indiana is recognized for 12 minutes.

Mr. QUAYLE. Well, that is all this unanimous consent said. I said I only need 15. I guess my good friend from Virginia is saying I really only need 12 minutes to get on my wild responses to the wild statements that have been made here this morning. But so be it.

I ask indulgence of the Chair if he will inform the Senator from Indiana when he has used 10 minutes and have 2 minutes remaining.

Mr. President, the debate this morning has focused a lot on the constitutional issues surrounding the War Powers Act, and again we are getting back in this year of our bicentennial determining the constitutional responsibilities of the executive branch and congressional branch. I heard one Senator this morning say there is no argument here about who has the power of the purse, under the law of the land, and who has the power to declare war.

The Senator from Indiana concedes that point, and I think it is equivocally

clear who has the power to declare war—the Congress of the United States.

But it is also very clear from the constitutional authority that the President of the United States is the Commander in Chief. The President of the United States is the chief executive officer and the President of the United States may in fact deploy troops, and if the Congress does not like it, Congress can simply by majority vote in both Houses with the power of the purse deny those funds. That in fact can be done.

But I have heard it suggested this morning that somehow we in fact are going to war in the Persian Gulf.

Nothing could be farther from the intent or the desires not only of this Senator but from the President of the United States.

Who says we are going to war? Does somebody want to go to war?

What we are doing in the Persian Gulf is an operation to preserve peace.

We are there to provide certain support which was deemed to be in our national security interest not by President Ronald Reagan, but by former President Jimmy Carter.

Because of the short time I will not cite Madison or Hamilton. But I notice Hamilton has been cited a lot this morning on the difference between this country and those of kings. A big difference, as Hamilton discussed, was that kings had the power to deploy the troops and to declare war. We took the power to declare war away from our President.

No one is talking about declaring war. We are talking about a peacekeeping operation.

Let us look at the Gulf situation. We are, in fact, providing protection for ships in international waters. If we are going in on the side of aiding Kuwait, and I might point out Kuwait is not a combatant country in this particular case—Kuwait is not at war. Iran and Iraq are at war. If Kuwait were at war and we went in on the side of Kuwait, that might be a different situation. The U.S. fatalities that unfortunately have occurred there have been by accident, not by any hostile intention.

So again, I say that looking at the situation we have a peace-keeping operation.

You know, I might add, Mr. President, that our gulf policy, in fact, is succeeding. It is succeeding. We, in fact, now have far more cooperation from our NATO allies than we have ever had before. We have far more participation of the Gulf States than we every had before. We have curbed the expansion of the Soviet influence.

Yes, I would say that perhaps there is even a better chance to get a potential cease-fire, though who knows, between Iraq and Iran than we have had before.

So make no doubt about it, Mr. President, we are succeeding in our stated policy.

Now let us look at this specific resolution. I heard time and again this morning that the reason that we ought to impose the War Powers Act is because of the increase in pay, that our people over there are getting paid for hostile fire and imminent danger pay. Those are interesting words, hostile fire and imminent danger. Congress changed the description of that pay from hostile fire pay that we had in 1963. They changed that in 1982. Congress did that. It was not the Department of Defense. I wonder if the sponsors of this resolution who are hanging their hat on the fact that we are now giving the hostile fire and imminent danger pay, if they know that there are other areas of the world where our soldiers and our men and women in military uniform are getting that hostile fire and imminent danger pay. I wonder if they know that, Mr. President. Our military personnel are getting that kind of pay in Colombia, Peru, El Salvador, and the Sudan.

I suppose we will probably have a War Powers Act to be consistent in all those countries because of imminent hostilities.

So as they hang their hat on that peg of what the pay is over there, let them be consistent. Offer a war powers resolution for Colombia, for Peru, for El Salvador, and the Sudan. Let them do that, Mr. President.

Now I think we have got to ask ourselves: What is going to be the perception of the world and what kind of message are we really sending by passing this resolution?

Khomeini made a very threatening statement to the Gulf States a few weeks ago. He said this; and it is very instructive of the mindset over there. He said to the Gulf States:

> You know, the United States is here now. But you don't know how long they are going to be here. And, you know what? Iran is going to be here forever.

Which is an implied threat to those much smaller states, because of the population and military power of Iran, that, "By golly, you better not cozy up too much with the United States. We are going to be here. They are not."

If this resolution is going to be potentially sending a message, how is it going to be perceived? Is it going to be perceived as, that if the United States would get hit somehow, we in fact could be pushed out? Where would the United States be if that's the message? Where would the Congress be then if you had direct hostile actions?

I know full well the sponsors of this amendment have no desire to make this an invitation to hit the United States, none whatsoever. But I am not sure what the practical effect of this is going to be. What is the practical effect of this?

And who says that these are imminent hostilities? We have seen the publicity; we have seen the threats. There has not been any direct intentional attack against the United States. And, by golly, I hope there never is. I hope to God there never is.

But I wonder what we are doing? I heard a discussion saying, "The polls of this country are opposed to our presence in the gulf." Well, you know, we do not conduct our foreign policy by polls. And we should not conduct our foreign policy by polls.

We heard a lot of discussion, I remember, in Grenada. When the President launched the rescue mission in Grenada, some in Congress were urging that we invoke the War Powers Act, right after that. Well, they stopped calling for that, Mr. President.

The PRESIDING OFFICER. The Chair will notify the Senator from Indiana he has consumed 10 minutes.

Mr. QUAYLE. I thank the Chair.

They called for the War Powers Act, but they stopped calling for that when those kids came home, got off that airplane and kissed the ground. They said, "Oh, well, don't worry about that. I guess we didn't really mean it."

But here we go again, Congress is again trying to put itself in the position of the Commander in Chief.

I would just say to the sponsors of this resolution that if you really do not want us over there, just offer an amendment—maybe they will; I heard someone say this morning that maybe they will—just offer an amendment to cut off the funds for the deployment of ships in places such as the Persian Gulf. It is a very simple amendment. And the Congress has the constitutional authority to do that. No doubt about it. No doubt about it, Congress certainly has the constitutional authority to raise or cut funds for the armed services. But no one is talking about it. Nor is anyone talking about declaring war. We should not be talking about that.

But I think that we ought to think long and hard about the message that Congress is sending once again. Are we sending a message of consistency and support or are we sending a message saying, "Well, we really want to have it both ways"? What kind of message are we sending?

The policy over there has been and continues to be successful. This does not help that policy. As a matter of fact, I think that with this kind of message you will see perhaps more instability, which I know nobody wants, rather than less. We do not disagree that we want peace and stability. What we disagree on is how to achieve peace and stability. This is a peaceful operation and I hope it continues.

The PRESIDING OFFICER. The time of the Senator from Indiana has expired.

Who yields time?

Mr. HATFIELD. Mr. President, I ask for 7 minutes from the proponents' time.

Mr. BUMPERS. I yield 7 minutes to the Senator from Oregon.

The PRESIDING OFFICER. The Senator yields 7 minutes to the Senator from Oregon.

Mr. HATFIELD. Mr. President, in response to the distinguished Senator from Indiana, yes, we have done our homework. I am aware of the legislation authored by Representative PATRICIA SCHROEDER, which authorized the change in the pay. I am also aware of for what reason that change was made. We are not hanging our hat, Mr. President, on the fact that the administration has seen fit to adopt this increase in pay because of the hostilities and the danger, an imminent danger, in the Persian Gulf. It merely affirms the applicability of the War Powers Resolution.

Mr. President, before I quote the War Powers Act, I must say that I am a bit disturbed today by some tones of the debate. They are reminiscent of other experiences we have had in our Government when the law has been in the way of policy. So many times, the law has taken a secondary place, because people believed that the policy was so well crafted and so nobly motivated that the law should be set-aside in order to achieve the policy.

Mr. President, that is precisely the root of Watergate. That is precisely the root of the Iran-Contra hearings that we have just gone through. Well-motivated policy—maybe. But the fact was that there were laws that were in the way.

Now, we hear it said: "Don't hobble the President as he tries to reduce the tensions and arrive at some kind of solution in the Persian Gulf. Don't hobble the President."

Mr. President, this is reminiscent of the Constitutional Convention. The warmaking power was a great issue debated in Philadelphia. I need not extend into unlimited quotes, but George Mason, one of the great constitutional fathers, James Madison, and Thomas Jefferson, all believed we should clog, if necessary, the war-making capability of the chief executive. They changed "war-making" to "declaring war" in order to show again their emphasis upon the joint responsibility for war-making that they wanted to establish between the legislative branch and the executive branch. Some of us believe that it is more important than even the Founding Fathers' perception that the Congress must have a legitimate and important role that we "Don't hobble the President."

That means that we cannot let the law get in the way. Let me quote the law. The law says: "When the President sees the necessity to introduce Armed Forces 'into hostilities or into situations where imminent involvement in hostilities are clearly indicated by the circumstances.'"

Forty dead Americans already; 40 plus naval ships there ordered to defend themselves with the fire capacity of those ships. Can anybody deny that we are in circumstances which are clearly hostile?

The Senator from Indiana declares that we are not going to be involved in war. I wish I could stand here and say that. Or that we are not moving to a war. Even if we were, I suppose we could use clever phrases like "police action." We have developed so many skills to circumvent the reality of war because the Congress, more frequently than not, does not want to take any responsibility.

I feel very strongly that when this law is in place, if we do not like the law, let us amend it. This ignoring the law, setting it aside, going around it because, "Oh, we can't hobble the President; we can't fulfill a policy that may be a good policy" is mind-boggling. I do not think it is a good policy, Mr. President. But even those who think it is good, even they cannot escape the law.

What hypocrisy that we engage—we hail the Constitution and our system of constitutional government as a government of laws and not of men and then at the very time celebrations that are taking place across this country to celebrate it we say today on the floor of this Senate: Do not let the law get in the way. We do not like the law. We think it might hobble a policy.

Well, Mr. President, that certainly is not a government of law. We are now engaging in a charade. We are saying that the law has become an impediment of a policy that we like, a policy that we want to follow or a President that we love and respect. And so we want to toss it—the law—aside.

This is the failure of the Congress to exercise its responsibility under the law. It is not to hobble the President under the law. It is to make him accountable and to make the Congress accountable. And we are doing neither in failing to adopt the amendment we have pending before us.

Mr. President, what time do I have left?

The PRESIDING OFFICER. The Senator has 1 minute left.

Mr. HATFIELD. Mr. President, I would only like to pose a question to the Senator from Indiana, the Senator from Virginia, and any other Senators who are opposing my amendment. To whomever is opposing this amendment, I would just like to ask one basic question. Is the War Powers Act a part of the law of the land?

Mr. QUAYLE. I will be glad to answer that if the Senator would yield.

The PRESIDING OFFICER. The Senator has yielded to the Senator from Indiana for a question.

Mr. QUAYLE. I would be glad to answer that and say certainly the War Powers Act is the law of the land until it is deemed to be unconstitutional. I think there are some unconstitutional features to it. But I would like to ask the Senator: Define what hostile action is? What is hostile? That is what we are talking about.

The PRESIDING OFFICER. The Senator from Oregon still has the floor.

Mr. HATFIELD. Forty Americans have perished; we have directed our vessels to defend themselves when they may be fired upon; we have foreign ships with our flag sailing through the gulf. If that is not hostile—as a veteran of World War II I can tell you that there were many actions that were less hostile and yet deadly. I can tell you what hostile is: When my life is at stake.

Mr. QUAYLE. Does the President of the United States in conjunction with the War Powers Act have a right to repel an attack without coming to the Senate and asking for it?

Mr. HATFIELD. Yes.

Mr. QUAYLE. That answers my question. You would not oppose it then.

Mr. HATFIELD. But I would say to my brother from Indiana, read all the law. The law says very clearly the President has duties to inform the Congress. We have the total law here, and it does not absolve the Congress of a responsibility. Just because the President ignores a part of the law in triggering that responsibility, we should not seek to assume that responsibility ourselves.

Mr. QUAYLE. The President has a right to respond to attack.

The PRESIDING OFFICER. The time of the Senator from Oregon has expired. The Senator from Virginia.

Mr. WARNER. Briefly, in reply to my distinguished, good friend from Oregon, when he says that he has had military experience to enable him to judge a situation—I acknowledge that. I know of his extensive involvement in combat situations in World War II and I have nothing but respect for this fine American.

Mr. President, I disagree with my good friend from Oregon, in terms of the basic facts and the necessity to trigger this law. It is the law of the land.

Mr. President, at this time I yield such time as the distinguished chairman of the Senate Armed Services Committee may require.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, I think this has been a good debate. I do not know of any subject that is more difficult than this. I really do not know of any question we will have here in this deliberation of this bill that is closer in my own mind than this one.

Frankly, if we had voted on this issue before the recess, I think a case could really have been made, based on the evidence we had before our committee then, that hostilities were, indeed, imminent. I think the word "imminent" is very important. I think it is important for us to understand what it means.

I am just looking at the dictionary. Perhaps there is another definition in another dictionary. This is the Random House College Dictionary and it says imminent means likely to occur at any moment. The words "likely to occur at any moment."

This is a technical issue. I think this issue is much broader than technicalities and it should not be decided that way but it is so close on the merits that to me I have to refer to the words themselves.

I do not believe, based on the evidence I have seen and heard, that we could say that we are likely to get into hostilities at any moment in the Persian Gulf. I add very quickly that I think it is possible and I think over a period of time it is probable. If we are there for another 6 months, I think something, some kind of hostilities is probable. But I cannot say to my colleagues that I feel, based on the evidence now, it is likely.

I think there is evidence that the Iranians are basically trying to stay away from our vessels. That could change overnight and I recognize that.

The dilemma is that we should not be in this posture. You can only run the foreign policy of the United States if you have a consensus, a consensus in the Congress, House, Senate, and a consensus among the American people.

This administration does not have a consensus in the Persian Gulf. They did not consult with Congress until after they had already made the decision and agreed with Kuwait to flag the vessels.

I searched for about 4 weeks for a strategic purpose behind this Kuwaiti flagging. I have not found that strategic purpose yet.

You can ask the questions any way you want to and it is awfully hard for me to justify the policy. I think the policy is wrong. I think it is not in our national security interests.

But the problem now—and this is what the War Powers Act, and even before the War Powers Act—what the dilemma is for Congress: Once the President has committed to a certain course of action—and I think in this case he did it in breach of the spirit of the War Powers Act—but once he had done that, what does Congress do to keep the situation from becoming worse?

If we pass this resolution and if the House passed it and if it is signed into law—and those are all three "ifs," as we know—what happens? We have 60 days in which the Congress can act affirmatively to permit the actions described in this amendment, that is the flagging of vessels and the attendant protection of vessels.

Then if we do not pass it the President has 30 more days, if he makes certain more declarations under the War Powers Act. At the end of 90 days what happens? This is why the War Powers Act needs some revisiting, in my view. What happens? Do we deflag the vessels, then; the Kuwaiti vessels? Or do we pull all of our ships out of the Persian Gulf? Do we pull part of the ships out of the Persian Gulf?

What happens if the Kuwaiti vessels are deflagged and an American warship on routine patrol in the Persian Gulf is there when the Iranians, or for that matter the Iraqis, attack that vessel?

I do not think there is any answer to it. I do not know where we go. This is one of those areas of the Constitution where it can only work with good faith on both sides. The Founding Fathers did not solve every problem. If they had attempted to do that we wouldn't have had a Constitution; so they left some vague areas and they left it up to the good faith of both branches of government.

We spent a lot of time talking about that this week already in another vein. I think in this case the administration had better get its own policy straight; it better get a definition of America's strategic interests. It better get some definition of how long we are going to continue to flag those vessels; it had better start answering questions about what happens if a Japanese vessel is attacked by the Iraqis right next to one of America's warships.

I do not think there is any policy on that. We are in a strange position of protecting Kuwaiti vessels against the Iranians. What happens if some of our best allies have ships attacked by the Iraqis? There is no answer. There is no answer from the administration.

The military people in the Pentagon do not know how long we are going to be there. They do not know really what the strategic policy is. And they are very frustrated. By "they" I am not trying do describe all of them. I am trying to describe a general feeling of frustration.

I will vote to table this amendment but I will do so with a great deal of reluctance. I will commend the Senators from Oregon and Arkansas for bringing this to our attention and I would send a warning to the administration that we do not have a lot of time to try to build a consensus. Because if something happens over there we are going to be in a very uncomfortable position of being in some type of hostility without having a consensus in the House or the Senate.

Mr. President, I would yield the floor.

Mr. HATFIELD. Would the Senator from Arkansas yield 2 minutes?

The PRESIDING OFFICER. The Senator from Arkansas; does he yield time?

Mr. BUMPERS. I yield to the Senator from Oregon 1 minute.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. HATIELD. Mr. President, it disturbs me a little bit to hear these semantics about what constitutes hostilities or not. I think it is clear in the Defense Department what constitutes hostile pay in a letter dated August 25, 1987, where American troops are exposed to the danger of hostile mines or of being killed or wounded by hostile fire. Hostile is the Persian Gulf.

In the conference report on the War Powers Resolution, it says very clearly that it includes all commitments of U.S. Armed Forces abroad to situations in which hostilities have begun and where there is a reasonable expectation that American military personnel would be subject to hostile fire.

Mr. President, there were over 300 military attacks in the Persian Gulf before we got there. That is the situation, the circumstance.

Ask the parents of these 41 Americans who were killed what the situation is, what the circumstances are. Those men out there did not die choking on a chicken bone at a Sunday school picnic. They were in a hostile environment. That is why they lost their lives.

Let us not engage in these semantics when we have such strong evidence to define what our situation really is.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BUMPERS. Mr. President, I yield the Senator from Ohio 5 minutes.

How much time have I remaining?

The PRESIDING OFFICER. The Senator has 9 minutes remaining.

Mr. BUMPERS. I yield 4 minutes to the Senator from Ohio.

Mr. GLENN. Mr. President, I find myself on the horns of a dilemma here. Ever since the War Powers Act was passed, which I supported—it passed just before I arrived in the Senate but I supported it in the Foreign Relations Committee at that time—to my knowledge there never has been a single submission under the War Powers Act. It has been ignored by administration after administration through one crisis or another. The War Powers Act is inoperative. In my view, we ought to either make it operative or get it off the books. That is

the debate we should have with regard to the War Powers Act.

I do not think there can be any doubt in anyone's mind that if you look at the facts with regard to the Persian Gulf it is hostile, it is dangerous. The pay is one example of it. We should be submitting this under the War Powers Act if the President is ever to submit anything under the War Powers Act.

If they do not, then we should have a debate as to whether it is ineffectual and get it off the books. That is a separate debate.

Having said that, I think we should have the War Powers Act invoked here. But, let me say this now, if it is invoked, I will vote to continue our support for activities in the Persian Gulf. This is not just the one-quarter to one-third of the world's oil production per day coming out of the Persian Gulf that we are concerned about. We can make some adjustments on that. But it is 70 percent of the world's oil reserves for the future. That is the importance of the Persian Gulf.

With all the Pentagon talk about keeping navigation open, involved in some great principle of maritime law, that may be all good to the Pentagon, but to me if we had two little islands in the middle of the Pacific shooting at each other, we would not be sailing our ships up and down between them to show we had freedom of navigation.

But the whole free world has an economic interest in that Persian Gulf, and I will vote to continue our mission in the Persian Gulf so they can rely upon us and know they rely upon us.

That was their question when we were over there. The distinguished floor manager, Senator WARNER, and I were over there. That was the concern everywhere we went, is America reliable? Will you pull out, a la Beirut, a la Tehran, where we have said one thing and done another in that part of the world? They do not know that they can rely on us.

The energy needs of this world are centered 70 percent in the Persian Gulf. Make no mistake, we cannot go back to being a wood-buring or coal-burning world; we are an industrialized petroleum-burning world. On the importance of that Persian Gulf, I have asked for 10 years, if you had your choice of 10 square miles of territory, what would you take? I said I would take the in and out channels through the Strait of Hormuz. That is the importance of the Persian Gulf.

I want to see our commitment continue, but at the same time I do believe we should either make the War Powers Act mean something or get it off the books and stop this charade it has been ever since it has been published. To my knowledge, there never has been a submission by any President under the War Powers Act. I believe that is correct. At the same time, I am committed absolutely to an American presence and our superpower world leadership to maintain availability to the industrialized world for the Persian Gulf oil, which is 70 percent of the world's known reserves of oil. That is the importance of it.

To me these are two different things. I think the War Powers Act should be invoked. At the same time I will fight on this floor to continue our involvement in matters about keeping the Persian Gulf open because it is so important for the future, for my children, grandchildren, for the whole industrialized world, until we come up with a different energy source where we are not dependent on petroleum.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Arkansas has 5 minutes remaining.

Mr. BUMPERS. Mr. President, the Senator from Ohio made a very cogent remark. In my opinion, and I think in the minds of 99 percent of the lawyers who have studied this in this country, I say the President is flouting the law. This is not the first President to flout the law. But we ought to give this body the chance to vote, to force the imposition of the War Powers Act, so the debate, as the Senator from Ohio has said, can commence. Shall we stay or shall we leave?

This does not mean we remove all of our airplanes and ships from that area. That is a piece of sophistry everybody understands. We are not suggesting that. What we are suggesting is, do not escort ships of a nation which is clearly aligned and whose ships are always going to be subject to attack.

The other day, Judge Bork was asked or he was saying there is no right of privacy, the Constitution does not state privacy, there is no such word in the Constitution. He concluded by saying privacy of what? They were talking about the right of a married couple to privacy in their bedroom. He objected to that. He said privacy of what? Private businessmen to meet in a hotel room and fix prices, or privacy of people to have a cocaine party in the privacy of their home?

I am not on the Judiciary Committee, but my response to that would be, "Judge Bork, if you do not know the difference between the right of a married couple to privacy in their bedrooms and people in a hotel room conspiring to commit murder, or fix prices, if you do not understand the difference between those things, you are in big trouble."

So, here we are, talking about combat pay in Colombia and combat pay for some of our marines who died in our Embassies.

Senator, if you do not understand the difference between paying people combat pay in those situations and having 41 warships in a hostile environment where shooting is taking place every day, God help us all. We cannot make any other decision than let us go to war and Congress sit on its hunkers while we do it.

One of the arguments that troubles me here is hostilities are probable, but they are not imminent.

Does that mean that Congress, for example, in the case of a Serb who pulled the pistol and killed Archduke Ferdinand to set off World War I, does that mean we can only declare it imminent as he pulls his pistol from its holster to shoot the archduke?

If we are going to hang on a very narrow, narrow interpretation or definition of "imminent," the War Powers Act ought to be repealed because we will never invoke it.

So, far as what our forefathers intended when they said do not put the right to declare war and the necessity for raising money for that war in the same hand, they said the President will be the Commander in Chief and responsible for carrying out the war, but only Congress may declare it.

The argument of the Senator from Indiana is that the President has the power to carry out the foreign policy of this Nation. If that power is carried out by the President in a way that is absolutely certain to take this country to a war that Congress feels is wrong or unjustified or that we do not want to commit to, are we to sit here and wait until the war commences because of a piece of sophistry that he has unfettered power to conduct foreign policy?

Mr. QUAYLE. Will the Senator yeild?

Mr. BUMPERS. No; I will not.

Mr. QUAYLE. Why?

Mr. BUMPERS. I would like to quote what the Continental Congress said to George Washington. They said we are making you Commander in Chief of the American Forces, but here is what they said and I quote:

> You are to regulate your conduct in every respect by the rules and discipline of war and punctually to observe and follow such orders and directions from time to time as you shall receive from this or any future Congress of these United Colonies or a committee of Congress for that purpose appointed.

That sheds a little light on the role of the Commander in Chief from the perspective of our Founding Fathers.

Has all time expired, Mr. President?

The PRESIDING OFFICER. All time of the Senator from Arkansas has expired. The Senator from Virginia has 30 seconds. It is the understanding of the Presiding Officer from the prior order that the Senator from Virginia had a motion he wished to make. After he has had that opportunity, there is an order for a recess in order that the Secretary of State may address the body. So the time of the Sen-

ator from Arkansas has expired. The Senator from Virginia has 30 seconds.

WAR POWERS IN THE PERSIAN GULF

Mr. BYRD. Mr. President, the Persian Gulf is a dangerous place. There is no question of that reality. Through a terrible accident, made possible in part by sloppy procedures and poor operational practice, an Iraqi pilot attacked the United States warship *Stark*, and 37 sailors perished. There is a sometimes heated, sometimes desultory war against shipping in the gulf. The war between Iran and Iraq is tragic and wasteful, costly to both sides. The diplomatic initiatives to end the war, which I strongly support, have not yet born fruit.

In the midst of these circumstances, the administration decided to allow Kuwaiti tankers to be reregistered under the United States flag. While the objectives of that decision may have been understandable, it soon developed that the reflagging would result in a large buildup of U.S. naval forces in the region, and an open-ended convoy and escort operation in the Persian Gulf.

I opposed the current escort operation, as did a number of other Senators in this body. We urged that its implementation be delayed and that diplomatic solutions be pursued further. We were unable to achieve sufficient votes in the Senate to carry our position, and the buildup has gone forward. I continue to believe that this policy is misguided, that it places U.S. forces at risk in an unnecessary manner, and that it places too much initiative to determine the course of events in the gulf in the hands of the Iranians, to say nothing of the Iraqis. While I believe the administration's policy toward the gulf is misguided, I do not believe that the War Powers Act should be invoked at this time. I recognize the merits of the arguments made by the sponsors of this amendment.

But, in highly ambiguous situations, such as the one we confront in the gulf—which are dangerous, to be sure, but which may not exactly conform with the definition of the phrase "imminent hostilities," the application of the War Powers Act is difficult to interpret.

I also have reservations about invoking the War Powers Act now, at a time when it could be interpreted to require the pullout of the American commitment in the gulf. The reason our Nation has been placed in the embarrassing position of putting our flag on someone else's ships and then spending our money and risking American lives to protect them is because our credibility and our commitments to our friends in the region were called into question by the disastrous initiatives which led to the Iran-Contra fiasco. To call into question our commitment to the region now could further damage the credibility of the United States in the area.

I respect the views of the Senators offering this amendment. They believe the situation is fraught with danger, that the escort and convoy operation is imprudent, that the policy is wrong. I could not agree more. But I believe that invoking the War Powers Act at this time could foreclose options both now and in the future for dealing with this problem in ways which do not further undermine U.S. credibility.

Mr. WARNER. Mr. President, there has been a very good debate on this issue. It is a closely divided question. It comes down to factual distinctions as to whether or not our men and women are in imminent danger in this area. But I say to my colleagues who are listening and studying this issue that the men and women of the Armed Forces of the United States are in danger in positions throughout this world, in some cases greater than those in the Persian Gulf. We can recite instance after instance, to use the metaphor of the distinguished Senator, of a cocked pistol being held to the head of our brave young men and women all over the world. The facts do not support the Congress at this time invoking the War Powers Act.

Mr. President, I now move to table the underlying amendment No. 697 and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

RECESS UNTIL 1:30 P.M.

The PRESIDING OFFICER. Under the prior order of the Senate, the Senate will now stand in recess until 1:30, at which time the vote will occur on the motion to table. The Senate will stand in recess until 1:30.

Thereupon, at 12:32 p.m., the Senate recessed until 1:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. CONRAD).

The PRESIDING OFFICER. The question is on the motion to table the amendment of the Senator from Oregon. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from New Jersey [Mr. BRADLEY], and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I further announce that the Senator from North Carolina [Mr. SANFORD] and the Senator from Connecticut [Mr. DODD] are absent on official business.

On this vote, the Senator from North Carolina [Mr. SANFORD] is paired with the Senator from Arizona [Mr. MCCAIN].

If present and voting, the Senator from North Carolina would vote "nay" and the Senator from Arizona would vote "yea."

Mr. SIMPSON. I announce that the Senator from Texas [Mr. GRAMM] and the Senator from Kansas [Mrs. KASSEBAUM] are necessarily absent.

I also announce that the Senator from Arizona [Mr. MCCAIN] and the Senator from Utah [Mr. STAFFORD] are absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 50, nays 41, as follows:

[Rollcall Vote No. 256 Leg.]

YEAS—50

Armstrong	Garn	Nunn
Bentsen	Graham	Pressler
Bond	Grassley	Quayle
Boschwitz	Hatch	Reid
Byrd	Hecht	Rockefeller
Chafee	Heflin	Rudman
Chiles	Heinz	Shelby
Cochran	Helms	Simpson
D'Amato	Humphrey	Stennis
Danforth	Karnes	Stevens
DeConcini	Kasten	Symms
Dixon	Lugar	Thurmond
Dole	McClure	Trible
Domenici	McConnell	Wallop
Durenberger	Mitchell	Warner
Evans	Moynihan	Wilson
Fowler	Nickles	

NAYS—41

Adams	Gore	Mikulski
Baucus	Harkin	Murkowski
Biden	Hatfield	Packwood
Bingaman	Hollings	Pell
Breaux	Inouye	Proxmire
Bumpers	Johnston	Pryor
Burdick	Kennedy	Riegle
Cohen	Kerry	Roth
Conrad	Lautenberg	Sarbanes
Cranston	Leahy	Sasser
Daschle	Levin	Specter
Exon	Matsunaga	Weicker
Ford	Melcher	Wirth
Glenn	Metzenbaum	

NOT VOTING—9

Boren	Gramm	Sanford
Bradley	Kassebaum	Simon
Dodd	McCain	Stafford

So the motion to lay on the table amendment No. 697 was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. NUNN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, may I say that I felt this was one of the——

Mr. QUAYLE. Mr. President, can we please have some order?

The PRESIDING OFFICER. May we please have order in the Chamber so the Senator can be heard?

The Senator from Virginia.

Mr. WARNER. Mr. President, I thank the Senator from Indiana.

Mr. President, we have had a very good debate on this issue. The vote is by no means an overwhelming vote, and indicates clearly the sensitivity of the thinking of this body. I am appreciative of the efforts on both sides of the aisle. This is not in my judgment a partisan issue. It reflects the conscien-

tiousness and deep thinking by all Members of this body.

I thank the Chair.

Mr. BUMPERS and Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

Mr. NUNN. Mr. President, will the Senator yield for a very brief time?

Mr. BUMPERS. I am happy to yield to the manager.

Mr. NUNN. Mr. President, I congratulate managers of the bill in the way that this was presented.

I want to thank particularly the Senator from Arkansas, and the Senator from Oregon for being so cooperative on the schedule. Without the cooperation of the Senator from Arkansas and his willingness we would have had more difficulty this morning. He was willing to bring up this amendment now, and has been very, very helpful. I thank him. He has been a great help to the floor managers.

Mr. President, I want all Senators, whether they are here on the floor or through staff, to listen very briefly. I will not make this long.

The Senator from Virginia has to leave in just a moment. There is almost no chance that we are going to be here any less than until about 11 or 12 o'clock tonight, all day tomorrow, and by all day I mean starting at a reasonable hour such as 8:30 or 9 o'clock in the morning depending on when we go out, and 6 or 7 o'clock tomorrow afternoon late. The odds are against it. The reason is we have just such a huge workload. The only way we can escape this is to get time agreements on amendments. There are a lot of amendments. But these are a few of them that have to have time agreements if we are going to finish this bill by the end of next week.

Let me propose this, and this does not speak for the authors of the amendments. But we have canvassed this side of the aisle. This represents, on some amendments, conversations with the authors, and on some amendments conversations with their staffs, and on some amendments simply my own estimate of what can be done. So it is not binding on anyone. I do not seek unanimous consent at this time. But I will ask my colleague from Virginia to please canvass his side on these amendments and see if he can get anything like this in terms of a time agreement today.

If we were to be able to achieve something like this list of agreements today, we could stay in until about, I would say, 9 or 10 o'clock tonight, not be in tomorrow, and come back in here Tuesday to get started early. So the odds are against it. I know it may not be possible. But I feel obliged to try.

First of all, on the Bumpers SALT II amendment, I proposed 4 hours equally divided.

Mr. BUMPERS. Mr. President, I would be willing to help out on this and cut an hour off. My distinguished compatriot, Senator HATFIELD, is on the floor. I think 3 hours would be adequate. We have debated that many times. I think we can shorten it.

Mr. NUNN. I thank the Senator. I will make note of that, and go on through the list. I am not asking unanimous consent now. I have not informed my colleagues on this. I am giving them a chance to later on today to react.

Mr. QUAYLE. Mr. President, will the Senator yield?

Mr. NUNN. Yes.

Mr. QUAYLE. I think it would be very helpful in trying to acquire some time agreements if we had the understanding like on the Bumpers amendment on SALT II, if it is going to be a motion to table, and there is a big difference between a motion to table and voting up or down on the amendment. If these are going to be motions to table, it is going to be a little bit easier to get time agreements. It would be just 3 hours, and up or down. I imagine that would be more difficult.

Mr. NUNN. I say to my friend that would be something to consider. I think a time agreement would not exclude a motion to table. But I think also the authors of the amendments, if you gave them a proposition like that, would not have much incentive to agree to time agreements. What the Senator from Indiana is saying in effect is if they lose, we move on. If they win, it is wide open. That is not a great deal to offer someone offering an amendment.

That means if the motion to table fails, as I understand the Senator from Indiana, then it is wide open for further debate.

So that is short of, if you lose off the amendment, we move on, and if you win, we have unlimited debate.

I just do not see that as much of a deal. But anyway, we will consider it.

The second proposition is the Kerry Asat amendment. I proposed on that one 2 hours equally divided.

Next we have the Johnston SDI funding amendment. I propose on that one 3 hours equally divided.

The next one is a likely amendment by Senator KENNEDY on the aircraft carriers. I propose 3 hours equally divided.

The next one is a Lautenberg amendment which we considered last year and voted on, which is religious headgear. I proposed 1 hour equally divided.

Senator DODD has an amendment on Panama. I propose 2 hours equally divided. That would maybe take less time.

Kennedy-Hatfield, nuclear testing: I propose 2 hours equally divided.

Levin transfer amendment: I am not clear exactly what that is, but we have looked at it briefly. Two hours equally divided.

Wilson, cost-effective at the margin: I propose 1 hour equally divided. He may want more time.

Helms, Minuteman II replacement: 1 hour equally divided.

Bumpers, man-in-the-loop: We cannot get a time agreement, but I hope we would finish it quickly or be able to get a time agreement of 1 hour equally divided.

Gramm, Davis-Bacon amendment: Everyone has heard about that for years, and I hope we can have 1 hour equally divided.

Gramm, service contract amendment. I propose 1 hour equally divided.

Weicker, consistent budgeting amendment: One hour equally divided.

Hatfield, chemical amendment: I propose one hour equally divided.

Pryor, chemical amendment: I hope we can do both of those this afternoon. One hour equally divided.

Mr. President, that is simply my proposition. I have not discussed this with all the authors. I hope we can get some feedback on each of those amendments during the next 2 hours, and that way by 6 or 7 o'clock tonight we will know whether it is going to be all day tomorrow and in the evening tomorrow night.

That is my proposition. The Senator from Indiana has not had a chance to look at this, but I hope we canvass the people on both sides.

Mr. QUAYLE addressed the Chair.

The PRESIDING OFFICER (Mr. SHELBY). The Senator from Arkansas has the floor.

Mr. QUAYLE. Will the Senator yield for an observation?

Mr. BUMPERS. I yield.

Mr. QUAYLE. Mr. President, we will be glad to canvass this. I might say two things: First, Senator WEICKER informed me that he has an additional amendment—if I may have the attention of the chairman of the Armed Services Committee.

I tell the chairman that Senator WEICKER indicated that he would have an additional amendment on transferring $2 million from DOD to NIH. That will take a half hour equally divided.

We will canvass this. On some of the very sensitive and important issues, with a motion to table at the end of the debate, it would be a lot easier to achieve those time agreements. I am being straightforward with the manager.

Mr. NUNN. I think that would be a great step forward, if we can get that kind of agreement; and I would hope that under that agreement, every time

a motion fails, if one fails, we would not have extended debate after that. It would be a step forward. I would welcome that.

Mr. QUAYLE. We can probably delineate to the chairman which one of those issues, if a motion to table failed, would require extended debate. Obviously, on a lot of them, if a motion to table would fail, the Senators would have spoken.

There are sensitive issues which I and others do not like, and if they were attached to this bill, there would be some problems.

Mr. NUNN. I thank the Senator from Indiana. That has been helpful. If we can have only a few of them that were still wide open after the motion to table failed, that would be a step forward. If we can get this kind of situation between 5 and 6 o'clock this afternoon and know where we are going next week, we can avoid tomorrow's session.

Mr. PRYOR. Mr. President, will the Senator from Arkansas yield to me for a question?

Mr. BUMPERS. I yield.

Mr. PRYOR. Mr. President, what would be wrong—and I pose this question—with discussing many of these amendments this afternoon, whether we have a time limitation or not, debating these amendments, and then disposing of them not by vote but simply laying them aside until 8 o'clock Tuesday morning, and stacking a series of votes on these particular amendments? Not only might that avoid a very late night, but it also might avoid a Saturday session.

It appears to me that already 10 Members of the Senate have gone. I understand that by 2 hours from now, another 5 to 10 Members of the Senate are going to be gone.

Why do we not stack these amendments for Tuesday; debate them today and tonight; and use some good sense around here?

Mr. NUNN. If we can get Senators to stay here and debate the amendments and make sure we have them to debate, that would make sense. The problem is that if you announce something like that and do not have Senators handcuffed to the Chamber or put some kind of iron rail around the Chamber, everybody leaves town, and then you are left with nobody here, no amendments up, and no way to make it work.

You would have to get unanimous consent as to which amendments were coming up, and you would have to have some time agreement. You would have to have Senators come in and give their Boy Scout oath that they would stay. They would have to tell you honestly that they are going to be here and debate. Otherwise, you would lose everybody.

Your biggest problem is getting people to stay once you announce no more rollcalls.

Everyone should be aware that I anticipate 10 or 15 rollcalls between now and tomorrow night.

Mr. PRYOR. I thank the distinguished chairman.

AMENDMENT NO. 699

(Purpose: To prohibit the development of strategic defense systems designed to engage attacking forces without first receiving a substantially contemporaneous command issued by the national command authority)

Mr. BUMPERS. Mr. President, perhaps we can dispose of this rather quickly, if I start where I normally end up in the debate.

I have been concerned for a long time about the strategic defense initiative——

The PRESIDING OFFICER. Will the Senator suspend?

The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 699.

Mr. BUMPERS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following:

"SEC. . Notwithstanding any other provision of law, no agency of the federal government may plan for, fund, or otherwise support the development of architectures, components, or subcomponents for strategic defense against air-breathing or ballistic missile threats that would permit such strategic defenses to initiate the directing of damaging or lethal fire except by affirmative real-time human decision at an appropriate level of authority."

Mr. BUMPERS. Mr. President, in the event that SDI is some day perfected and deployed, it is the Pentagon's belief and it is the belief of the Strategic Defense Initiative Office that our sensors that we will have deployed in space will not know that a launch has been commenced for 30 seconds after the fact.

Mr. QUAYLE. Mr. President, will the Senator yield?

Mr. BUMPERS. I yield.

Mr. QUAYLE. Can we get a copy of the amendment? We do not have one. The majority manager of the bill does not have one, either.

Mr. BUMPERS, I am sorry. I will proceed while the distinguished floor managers are looking over the amendment.

Let me repeat: The sensors that we are going to use to detect a Soviet launch will not know whether a launch has occurred for 30 seconds after the fact. They pick up the fire trails of the missiles.

General Abrahamson has said that ideally we should respond between 40 and 50 seconds after the launch. That means that, ideally, since 30 seconds will have gone before we know a launch has taken place, we would have only 10 to 20 seconds to activate the SDI. That is not time to get the President off the tennis court or to find him, wherever he may be, and say: "Mr. President, I think the Soviets have launched. What do you think we ought to do about this?"

With such a short time to make this decision, which may determine the fate of the planet Earth, I did not want the planet Earth to be incinerated because of a malfunctioning computer chip, and I do not want SDI built so that it can only be activated by a computer chip. This amendment simply says that SDI may only be activated by human hands.

We call it the PTL amendment, the person in the loop, a human person. If we are going to make a decision to destroy the planet, then it ought to be at least by a human being who is using all of the very precautionary guidelines that can be laid down for making that decision.

Under the very best circumstances, Mr. President, he is not going to have very much time.

Here is a document from the Strategic Defense Initiative Office which has a time line on what will occur if that unhappy day ever comes. First, 30 seconds after the Soviets launch. Our sensor will tell us that they have launched. Ideally, we would activate our SDI system within 10 to 20 seconds. But you do not have much time, if you do not launch with 100 seconds, from the time they launch, forget it. That trillion dollars you have spent on SDI is practically worthless.

So, Mr. President, with all of this in mind, I wrote to Secretary Weinberger. I said, "Mr. Secretary, I have been concerned for some time about the role, or lack thereof, that human judgment would play in weapons developed for SDI, especially for weapons that would fire during the boost phase of a missile launch."

I go on and talk about that. I say:

My concerns about a totally automated, computer-controlled SDI system able to fire without a human in the loop are further heightened by Department of Defense documents recently released by the Strategic Defense Initiative Office pursuant to a request by Senator Bennett Johnston. These documents show that in 1981 the Air Force was concerned that a system very similar to the SBKKV approach now being developed would require an "on-board, automated . . . force execution decision," which "results from [the] very short decision timelines (2-5 minutes)."

And General Abrahamson the Director of the SDI Office, wrote me back, and for one time we agreed:

DEAR SENATOR. Thank you for your letter to Secretary Weinberger, dated June 2, 1987, in which you requested information on the role of man in managing any future Strategic Defense Initiative (SDI) system. Secretary Weinberger asked that I respond on his behalf.

I share your concern and consider positive human control an essential feature of the SDI system. While the detailed requirements and procedures for implementing man-in-control are being addressed, with the help of the U.S. Space Command, certain essential aspects are clear.

He goes ahead to say in the letter, and I will put it in the RECORD for all to see:

The SDI command and control system will have man-in-control and will have stringent trusted system and fault tolerant requirements.

General Abrahamson says—in one sense I guess that amendment is redundant because he says they are going to do it. But I will sleep a lot better and I believe America will if we just put it into law and say that we are not going to trust a malfunctioning computer chip to decide how we respond to a launch.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. BUMPERS. Mr. President, I ask unanimous consent that my letter to Secretary Weinberger and the response of General Abrahamson be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, DC, June 2, 1987.

Hon. CASPAR W. WEINBERGER,
Secretary of Defense,
The Pentagon, Washington, DC.

DEAR MR. SECRETARY: As you know, an important consideration in the design and operation of the weapons we have in our arsenal is the importance of having a human being playing an active role before weapons are fired. Even the most sophisticated weapon or computer can make mistakes which, in a world of increasingly lethal conventional weapons and overpoweringly destructive thermonuclear weapons, would have extremely devastating consequences.

In this regard, I have been concerned for some time about the role, or lack thereof, that human judgment would play in weapons developed for SDI, especially for weapons that would fire during the boost phase of a missile launch. Space-based kinetic kill vehicles (SBKKVs), especially those that might be part of an early deployment of SDI, seem to be particularly relevant in this regard. I note that Lt. Gen. Melvin F. Chubb, the Commander of the Air Force Electronic Systems Command, was recently quoted as saying that the battle management needed for a SBKKV system to be effective requires that the kill rockets be launched within one minute of the launch of Soviet ballistic missiles. During this crucial minute, the battle management system must detect the launches, predict booster flight paths, and launch the SBKKVs. My worry is that there would not be time for a human being, at a very senior level, to verify that there was indeed a hostile attack under way, and not just a normal missile test flight or a rocket launching a satellite, or humans, into orbit.

My concerns about a totally automated, computer-controlled SDI system able to fire without a human in the loop are further heightened by Department of Defense documents recently released by the Strategic Defense Initiative Office pursuant to a request by Senator Bennett Johnston. These documents show that in 1981 the Air Force was concerned that a system very similar to the SBKKV approach now being developed would require an "on-board, automated . . . force execution decision," which "results from [the] very short decision timelines (2-5 minutes)."

These concerns are reinforced by a key covering memo to the Air Force documents, written by your office, a copy of which I sent you a few days ago. That memo states that since such a boost phase kinetic kill system "must detect missile launch, determine if it is a threat, launch a kill vehicle against it and complete the intercept, all in a few hundred seconds, there obviously is no time to involve the NCAs [National Command Authorities] in the decision process." Indeed, as the most recent SDIO Report to Congress points out, any boost-phase system would face these extremely demanding response requirements, or even more challenging ones if the Soviets react to such a system.

As you know, one logical Soviet response to a near-term SDI deployment would be to modify or replace their current rocket boosters with fast-burn boosters. Dr. George H. Miller, the Director of Lawrence Livermore National Laboratory, has testified that the boost phase durations of such rockets could be as short as 80-100 seconds.

In the face of such demanding time requirements, reliance upon automatic systems would be a tempting but dangerous way to deal with the problem for at least two reasons. First, there would be the strong possibility of accidental firing against benign targets, and the potentially devastating consequences that would result. Second, as a result of this false alarm fear, there is the real risk that such an automatic anti-missile system might simply be "turned off" at times of less than very high crisis, as happened with the U.S.S. *Stark's* Close-In Weapons System defense. Even a perfect SDI system would be ineffective if it were shut down at the very time it was needed.

In view of these seriously troubling concerns, I am writing to seek your assurance that the systems being developed under the Strategic Defense Initiative would not rely on computers and other machines alone in order to fire. Do the systems under development include plans requiring humans at appropriate levels of authority to make affirmative decisions before the systems can fire? What is the level of authority envisioned to activate the firing mechanisms of the system? What steps are being taken to assure that the systems will be able to respond in sufficient time to attack Soviet missiles in their boost phase? Are the concerns expressed in 1981 by experts in the Air Force and the Office of the Undersecretary of Defense for Policy concerning automatic operation, which the Air Force in fact called a "critical issue," still valid?

I look forward to your timely response to these questions. If you have any questions, please have your people contact Bruce MacDonald of my staff at 224-4843.

Thank you for your assistance.

Sincerely,

DALE BUMPERS.

DEPARTMENT OF DEFENSE, STRATEGIC DEFENSE INITIATIVE ORGANIZATION,
Washington, DC, June 26, 1987.

Hon. DALE BUMPERS,
U.S. Senate,
Washington, DC.

DEAR SENATOR: Thank you for your letter to Secretary Weinberger, dated June 2, 1987, in which you requested information on the role of man in managing any future Strategic Defense Initiative (SDI) system. Secretary Weinberger asked that I respond on his behalf.

I share your concern and consider positive human control an essential feature of the SDI system. While the detailed requirements and procedures for implementing man-in-control are being addressed, with the help of the U.S. Space Command, certain essential aspects are clear.

As your letter points out, for optimal system performance an effective boost phase engagement requires a weapons release decision within a very short period of time after launch detection. That decision, however, will not be made autonomously or automatically. As is the case with United States offensive forces today, any future strategic defense system will be tied into the National Military Command Center, the World Wide Command and Control System, the National Command Authority, and our Strategic Offensive Forces. Further, it is planned that in any situation or threat scenario, after confirmation by multiple sensors or evaluation of all source information, man will make the final engagement decision.

Our analyses and simulations indicate that for the unrealistic but worst case of a simultaneous launch, the earliest engagement decision can be made at approximately 40 and 50 seconds after launch. Minimal boost phase performance degradation will occur if the engagement decision is reached between 40 and 100 seconds after launch. Studies indicate that this decision time line is feasible and assure us that we can successfully conduct a boost phase engagement within time constraints. In order to further confirm our analysis, command and control will be extensively investigated and evaluated during upcoming SDI tests. These tests will help us carefully evaluate the prototype software and command and control centers, for use in any possible future strategic defense system.

We have also considered the potential for an accidental engagement. In addition to the positive man-in-control aspects of the system, the accidental engagement of a benign launch is made more improbable by a combination of factors. First, benign launches are one to a few at a time; not the massive launch that would require very short decision time lines. Second, on some benign launches we exchange information with the Soviet Union. In these cases, the system will be informed of planned benign launches and can monitor them closely, to prevent their being used as a cover for an attack, as well as to prevent an accidental engagement. Third, typical benign launches have different launch points and trajectories than hostile launches. Additionally, with a robust defense system in the future, one that we have confidence in the subsequent layers of defense—such as mid-course, a proper human command authority could

afford to wait a period of many minutes and observe the trajectory and circumstances of a single launch prior to authorizing any action. All these factors combine to give us confidence that we would never have an accidental engagement.

The SDI command and control system will have man-in-control and will have stringent trusted system and fault tolerant requirements. There is, however, one additional factor that should be considered: SDI is a defensive system. The very nature of the system mitigates against catastrophic results from weapons malfunction. Today, if the impossible happened to one of our or their offensive missiles, and it was accidentally launched it would mean that nuclear warheads would tragically be "on-the-way" toward a target on earth. This would not be the case with a defensive system accidental launch. However, the combination of man-in-control, stringent trusted system and fault tolerant requirements, extensive systems analysis and simulations, planned future evaluations, and the nature of the threat give us a high confidence that the system will effectively counter an attack while never accidentally engaging a target.

Again, thank you for the opportunity to address your concerns. If it would be of interest to you, I would be more than happy to meet with you at any time to discuss the classified aspects of our Battle Management/Command, Control, and Communications Program.

Sincerely,

JAMES A. ABRAHAMSON,
Lieutenant General, USAF, Director.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 699) was agreed to.

Mr. BUMPERS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. EXON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there further amendments?

AMENDMENT NO. 700

(Purpose: To direct the Secretary of the Army to lease certain lands at Fort Chaffee, AR, to the city of Barling, AR, for use by the city for the construction of a waste treatment facility, and for other purposes.)

Mr. BUMPERS. Mr. President, I have an amendment here which I believe has been cleared with both sides. It is a parochial amendment dealing with a community in my State which adjoins Fort Chaffee. I send this amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] for himself and Mr. PRYOR proposes an amendment numbered 700.

Mr. BUMPERS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following new Title:

TITLE . REQUIREMENT TO LEASE LANDS TO THE CITY OF BARLING, ARKANSAS

SEC. (1)(a) IN GENERAL.—The Secretary of the Army shall lease to the city of Barling, Arkansas, for the use by that city in the treatment of sewage, the following tracts of land at Fort Chaffee, Arkansas:

(1) A tract consisting of 320 acres and more particularly described as the NE ¼ and the NW ¼ of section 34, Township 8 North, Range 31 West.

(2) A tract 40 feet wide running from the northern boundary of the tract described in paragraph (1) to the Arkansas River, as may be agreed upon by the Secretary and the city of Barling.

(b) LEASE REQUIREMENTS.—(1) The lease shall authorize the city of Barling to construct and maintain a wastewater treatment facility on the land leased under subsection (a). Upon termination of the lease, the United States shall have all right, title, and interest in and to any improvements on the land.

(2) The lease shall be for such period, not less than 55 years, as may be agreed upon by the Secretary of the Army and the city of Barling.

(3) The lease shall require the city of Barling to pay rent for the use of the land in an amount to be agreed upon by the Secretary and the city. The amount of the rent may not exceed $1,600 per year.

SEC. 2. ALTERNATIVE OPTIONS

(a) IN GENERAL.—(1) In lieu of leasing to the city of Barling the lands described in section 1(a), the Secretary may lease to the city other lands under the jurisdiction of the Secretary adjacent to existing lagoons at Fort Chaffee, Arkansas, for use by the city in the treatment of sewage.

(2) Land leased to the city pursuant to paragraph (1) shall be leased at an annual rate of not more than $5 per acre.

(3) Any lease entered into pursuant to paragraph (1) shall be subject to paragraphs (1) and (2) of section 1(b).

(b) Use of Army Sewage Treatment Facility.—The Secretary may permit the city of Barling to use the sewage treatment facilities of Fort Chaffee under an agreement which would require the city to pay a reasonable cost for the use of such facilities and any reasonable costs incurred by the Army in increasing the capacity of the sewage treatment facilities at Fort Chaffee in order to accommodate the use of such facilities by the city of Barling.

SEC. 3. ADDITIONAL PROVISIONS

(a) LEGAL DESCRIPTION OF LANDS.—The exact acreage and legal description of any land to be leased under this section shall be determined by surveys that are satisfactory to the Secretary. The cost of such surveys shall be borne by the city of Barling.

(b) ADDITIONAL TERMS AND CONDITIONS.—Any lease or other agreement entered into under this Act shall be subject to such other terms and conditions as the Secretary of the Army determines necessary or appropriate to protect the interests of the United States.

Mr. BUMPERS. Mr. President, this deals with the community of Barling which is surrounded on one side by Fort Smith, AR, and on the other side by Fort Chaffee, I say one side, it is actually surrounded by either Fort Smith, AR, or Fort Chaffee.

They have a terrible situation down there with a waste treatment facility. They have been trying to work with the Army on this and this amendment says that the amendment gives the Secretary of the Army the choice of either leasing the 320 acres, suitable for a new lagoon, or be expanding the existing lagoon at Barling's expense.

Mr. President, it is just a simple question and, incidentally, Barling has agreed to handle a substantial portion of Fort Chaffee's waste treatment problems. They have problems of their own. They are willing to cut a deal with Fort Chaffee if we can get this worked out.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. Mr. President, this particular amendment comes under the jurisdiction of the Readiness, Sustainability and Support Subcommittee which I chair. It is a Milcon question and has been thoroughly cleared on this side. It is entirely acceptable to us.

My understanding is from my aides it has been cleared on both sides as far as we know. We have no objection to it.

Mr. EXON. There is no objection on this side of the aisle.

Mr. QUAYLE. Mr. President, we do not have a copy of the amendment. We got a copy of the previous amendment. I was under the impression that the previous amendment was being opposed by both sides but that it was an understanding that apparently was not the case. We do not mind moving ahead but there is a little bit of disarray right now.

And I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DIXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded so I may have a colloquy with my friend from Indiana to determine where we are going on this.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DIXON. Mr. President, may I say to my friend from Indiana that we are concerned about the time element, as he would realize. But, at the same time, I fully understand his concern which, as I understand it, is that you do not know what your side's position is on this amendment. We thought it to be a relatively innocuous one.

I must say, in all honesty, as the chairman of the subcommittee with jurisdiction, we thought everybody had pretty well known about it on your side. I do not mean that offensively.

But if we are going to have this kind of trouble about fairly noncontroversial—I hope my colleague from Arkansas will not take exception to that—amendments that do not involve any major expense or anything, I do not know how we are going to get the work done.

Mr. QUAYLE. If I might just answer my friend from Illinois, we have to have somewhat of an understanding of whether we are for or against amendments, whether they have been cleared or not cleared.

Where the confusion exists is that I was distinctly under the impression on the Bumpers amendment—now there is some dispute on whether it was going to be accepted or not accepted. As a matter of fact, I was conversing—I was on the floor; eveything was straightforward and we had a vote—I was conversing on the amendment and all of a sudden that was finished and we were going to something else. I did not have a copy of the amendment, the first one. I got one and was reading it during the debate. So I was trying to listen to what the Senator was saying and reading at the same time. We finished that one and got another one that they said had been cleared on both sides. I have no knowledge of that.

So that is why I put in a quorum call, to get some semblance of order of how we are going to proceed, if we are going to oppose or accept an amendment.

I did not think the manager of the bill was going to accept the first Bumpers amendment, but it was accepted.

Mr. DIXON. If my friend from Indiana will yield, this is jurisdictional to my subcommittee. It is Milcon. My good friend from New Hampshire, Senator HUMPHREY, would be the ranking member. Ken Johnson would be the staff person on your side. There are a whole bunch of these.

I think we waste an awful lot of time if we do not have somebody around that knows the position.

For instance, I have one of my own that I know this side is for and I cannot find out if your side has cleared it. I do not want to be facetious, but I think we are going to waste a lot of time if we do not have somebody that can say OK or no. The Senator is not the ranking member of this particular subcommittee, so you would not know.

Mr. QUAYLE. The second Bumpers amendment has not been cleared.

Mr. DIXON. Well, that is what we are on right now.

Mr. BUMPERS. I cannot vouch for the Senator's side. Staff had advised me that it had been cleared on both sides. One of the questions I have is how are we going to make a decision here? These amendments have been filed. I thought both sides, certainly the Senator from Georgia [Mr. NUNN] read all of our amendments off discussing the proposed time periods and I thought everybody had copies of the amendments and either signed on or signed off. It does not make any difference to me. If the Senator cannot get clearance on this one, I have another one and I will set this aside temporarily and offer another that maybe he can get cleared. I know Senator NUNN has been apprised of it for at least a week.

Mr. QUAYLE. The amendment that is presently pending, I am attempting to make contact with Senator HUMPHREY, who is the ranking member. Once we make contact with Senator HUMPHREY, then we will be in a position to proceed.

So you know, that is the order of business.

Mr. BUMPERS. Would the Senator have any objection to setting it aside until you can hear from Senator HUMPHREY?

Mr. QUAYLE. Give us a reasonable amount of time to get Senator HUMPHREY. Otherwise, you are going to get three or four amendments set aside. I do not want to be in a position to have to do that, trying to contact three or four people. Let us see if we can get this ironed out to see whether we can accept or propose other amendments.

Mr. BUMPERS. Before we put in another quorum call, let me say the amendment I wanted to offer pursuant to the one pending right now is one that is pursuant to the Scowcroft Commission to say that we ought to start a study. It is a fairly innocuous amendment to say that the Pentagon ought to start studying a follow-on for the Trident submarine.

The rationale is, if we enter into a START agreement with the Soviet Union tomorrow to limit both sides to 4,800 warheads, 4,000 of ours would be on Trident submarines when we complete our Trident Program. I think that is putting too many of our eggs in one basket and the Scowcroft Commission did, too; and they said we need a smaller missile-firing submarine so we do not have just a very few targets for the Soviets to shoot at.

It only calls for the Defense Department to start studying that which I think they are planning to do anyway.

But I am just telling you that so you can start running your traps on that one.

Mr. QUAYLE. Does the Senator yield? I will be glad to start working traps on that and I want to take a look at that. I do not want the Senator to fall over: I might even support him on that. It sounds like a reasonable amendment.

Mr. BUMPERS. For a change, you will be on the side of the angels.

Mr. QUAYLE. On second thought, I might reconsider that. Please strike that from the record, Mr. President. I thought of sponsoring that amendment. But we will get it going on this side. How many more do you have over there?.

Mr. BUMPERS. Well, not many. But I promise you, you will have adequate notice.

Mr. QUAYLE. I thank the Senator. I suggest the absence of a quorum, Mr. President.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DIXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DIXON. I have had a conference with the distinguished manager on the other side and I believe that we are again prepared to clear the Bumpers amendment and I think their side is as well. Then we can go to an amendment by the distinguished Senator from California [Senator WILSON].

Is that a fair representation?

Mr. QUAYLE. Will the Senator yield?

Mr. DIXON. I yield.

Mr. QUAYLE. Mr. President, I do believe that the second Bumpers amendment has been cleared. The understanding is, then we will move to an amendment by Senator WILSON that I think has been cleared; so we go back and forth. So we could go ahead and move the adoption of the amendment of the Senator from Arkansas at this time. Then we will get the Senator from California over here.

I might say that we ought to attempt to list cleared amendments that we presently think we have, and in the order in which the Senator from Illinois would like to proceed.

The first Bumpers amendment has already been accepted. We have the second Bumpers amendment. We have a few over here. We will go to the Senator from California, his amendment. Then the Senator from Illinois would read amendments that he thinks are agreed upon and the contents of the amendment—it would be very helpful to get maybe four of them discussed and we will go in the process of laying them down.

I hope that what we will do is go in the order that the Senator from Illinois outlines. I do not want to start jumping back and forth over the field at this particular time.

Mr. DIXON. Let me say what I would suggest as an order in order to get rid of four amendments. We have before us the Bumpers amendment. I would suggest that we dispose of it. That would be the first one, may I say.

The second amendment would be the amendment by the Senator from California [Senator WILSON] on

Mather Air Force Base, strike section 2817 re: Two Milcon projects.

We would agree to that. It has been cleared on both sides.

The third amendment would be an amendment by the Senator from Illinois on Chanute Air Base which would be offered as the third one as cleared, and it has been cleared by both sides.

The fourth would be another amendment by the Senator from California. I am not trying to favor him, but they happen to be ones that are at hand and have been cleared. Senator WILSON has another amendment on the Oakland land lease.

So it would be the Bumpers amendment, followed by an amendment on their side by Senator WILSON, followed by an amendment by the Senator from Illinois, followed again by an amendment by Senator WILSON. Then there are some others that are in the pot that will come to fruition that we can clear.

Mr. QUAYLE. Mr. President, I think that is a fair way to proceed. We are going to dispose of this amendment momentarily, unless the Senator from Arkansas has another enlightening speech about his amendment. There would be fairly quick approval of the Bumpers amendment. I just notified Senator WILSON's staff to obtain his presence here to offer the amendment. He will be here momentarily. We will dispose of that amendment and then we will get to the amendment of the Senator from Illinois and then back to another amendment by the Senator from California.

Mr. BUMPERS. Mr. President, I move the adoption of my amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 700) was agreed to.

Mr. DIXON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BUMPERS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. QUAYLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DIXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Illinois.

Mr. DIXON. Mr. President, I am sure my friend from Indiana trusts me and I trust him. I wonder if, in view of the fact that Senator WILSON is on his way to the Chamber, we can then do two Wilson amendments back to back simply so that we are using the time?

Mr. QUAYLE. I was going to use the time of the introduction, discussion, and adoption of the first Wilson amendment to get clearance on the amendment of the Senator from Illinois. I do not dispute my friend's announcement that it has been cleared, but I do not personally have that knowledge. That is what I was going to use the time for. Senator WILSON is coming to the floor. That is why we outlined the process, to give us a little bit of time as we move forward on these allegedly agreed-to amendments.

Mr. NUNN. If the Senator will yield, I am happy he used that term, "allegedly agreed to." That helps us. We have a key word now.

Mr. QUAYLE. Allegedly agreed to.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DIXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DIXON. May I say to my friend from Indiana that there are a number of amendments here that probably can be cleared, but his side has not shown them to me yet. I wonder if we can take note of this.

The distinguished Senator from Delaware, Senator ROTH, has an amendment that we have not seen. It is on base closure reform.

There is another amendment by my friends from Missouri, Senators DANFORTH and BOND, on Fort Leonard Wood, a base well-known to me, not far from my home. I wonder if either Senator DANFORTH or Senator BOND, if their offices are listening to the proceedings, could let us know about the Fort Leonard Wood amendment which is before us and which could, maybe, be cleared.

I have referred to the Roth amendment and the Danforth-Bond amendment.

May I say on my side there are several that I could mention as well, but that would give us a beginning. The Senator from Indiana might want to indicate some that he has reservations about.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DIXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DIXON. Mr. President, there is an amendment that has not been necessarily cleared on both sides but maybe one we can vote on if the Senator from New Mexico wants to educate us on superconductivity, something that we have always been very interested in.

Mr. QUAYLE. Will the Senator yield?

Mr. DIXON. Yes.

Mr. QUAYLE. I do not mind if he wants to talk about the amendment, and he can certainly offer it. It would be within his rights.

But that is not within the understanding we have.

Mr. DIXON. This has nothing to do with our agreed amendments. I thought while waiting for someone to come here, we might see if our friend has something we can consider. Is there objection to that?

Mr. QUAYLE. I thought the next order of business was to consider the Wilson amendment. That is what we decided. If you want to consider the Bingaman amendment, that is a different procedure. That has not been cleared, to my knowledge.

Mr. DIXON. I am prepared to take both Wilson amendments as soon as the Senator gets here. There is no question about that. I am not going to back out on that.

When the Senator from California gets here, he can go ahead and we will take both of his amendments. I am trying to save some time and use some time. But it is up to the Senator.

Mr. QUAYLE. This amendment has not been cleared.

Mr. DIXON. We are not saying it has.

Mr. QUAYLE. And the Wilson amendments have.

Mr. DIXON. Yes.

Mr. QUAYLE. You are going to get in the position of starting to set aside the Bingaman amendment to take up the Wilson amendment when the Senator gets here.

Mr. DIXON. Perhaps the Senator from New Mexico could proceed and when the Senator from California, who has two agreed-to amendments, gets here, we could intercede and adopt them and then return to the Senator from New Mexico. This Senator, who has one at issue, will be glad to wait until that is concluded, if that is all right, so we can usefully employ the time.

Mr. QUAYLE. Mr. President, what should be done is to propound a unanimous consent that upon the arrival of the Senator from California, he be recognized to offer his amendment and that the pending amendment, if the Senator from New Mexico offers it, be set aside. What I suggest the Senator do is not offer the amendment but talk about the amendment, educate the Senate about the amendment, talk about it and save the debate for when the amendment is actually offered. I think that would be a better way to proceed.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, the amendment which I am offering along with Senator DOMENICI is designed to help guarantee a strong Defense Department contribution to our national effort to maintain U.S. leadership in the field of high temperature superconductivity.

There is undoubtedly no one in this body unaware of the momentous discovery earlier this year of ceramic materials which displayed the property of superconductivity at unprecedentedly high temperatures. Previously, superconductivity had only been achieved at temperatures of about 22 degrees above absolute zero or 400 degrees below zero on the Fahrenheit scale. These new ceramic materials display superconductivity at temperatures above 77 degrees above absolute zero which is the temperature at which liquid nitrogen boils. This discovery of materials which when cooled to the temperature of inexpensive liquid nitrogen display superconductivity will potentially revolutionize a whole host of critical technologies of importance both militarily and in the civilian sector.

The importance of the discovery has been compared to the discovery of the transistor and of the integrated circuit. And thus it is critical that the United States stay at the forefront of converting this discovery into technologies that will contribute to our military strength and to economic competitiveness in world markets.

Mr. President, many of us noted the rapidity with which the Japanese Government and industry reacted to this breakthrough in high temperature superconducting materials. We called upon the administration to put together a similar coordinated effort among government, industry, universities, and the national laboratories in this country.

Back in April when our committee marked up the bill which is before us today, we highlighted the importance of dealing with how to manufacture these new high temperature superconducting ceramic materials. This was an area in which the defense Advanced Research Projects Agency had already been actively involved because of other military uses for similar ceramic materials. As part of our defense manufacturing initiative we called upon the Department to emphasize research on manufacturing these materials and set aside $50 million to pursue this and other manufacturing technology initiatives within the Defense Advanced Research Projects Agency. The committee also added $10.5 million to the Navy's research and development program on electric drive propulsion in order to begin to investigate, develop, and apply the new superconducting materials for ship propulsion.

Mr. President, since our April markup, I am glad to say that our Government has taken significant steps to put together a coherent superconductivity initiative. The President announced an 11 point initiative at a gathering of our Nation's scientific elite on July 28 here in Washington. As part of that initiative, the President asked the Department of Defense to develop a multi-year plan to ensure the use of superconductivity technologies in military systems as soon as possible. Under that plan the Defense Department will spend a $150 million over the next 3 years. The President's plan emphasizes the DOD role in developing the required processing and manufacturing capabilities for these high temperature superconducting materials, just as the Armed Services Committee's report on this bill had done. The Defense Department will explore both small scale applications of the new high temperature superconductors to sensors and electronics and large scale applications to compact high efficiency electric ship drive, electrical storage, pulse power systems, and free electron lasers. Many of these areas will have a high potential for commercial spinoffs.

The President's July 28 initiative also assigned various other tasks to the civilian agencies. For example, the Department of Energy and its national laboratories were assigned to pursue basic research in superconductivity of importance to civilian applications and to facilitate transfer of technology to industry. My senior colleague from New Mexico, Senator DOMENICI, has been the leader of the congressional effort to ensure that the DOE laboratories have the resources and the authority to carry out these assignments. The National Science Foundation, the National Bureau of Standards, and the National Aeronautics and Space Administration also will have important roles in the overall Federal research effort.

Mr. President, the amendment that I am offering today is entirely consistent with the Armed Services Committee's previous actions to support research in this critical field and with the President's July 28 initiative. It seeks to ensure that at least $50 million will be identified in each of fiscal years 1988 and 1989 by the various Defense Department components for research and development relating to high temperature superconductivity just as the President announced on July 28. The information I have is that despite the President's announcement, firm funding commitments from the various DOD components have been slow to materialize. This amendment will ensure that that problem is resolved. The amendment also designates that an additional $10.5 million be used in each of fiscal years 1988 and 1989 to explore the development of superconductor technology to support the electric drive propulsion program of the Navy. This merely codifies the action taken in the committee's report on this program, as I mentioned earlier.

More importantly in my opinion the amendment places the Under Secretary of Defense for Acquisition or his designee in charge of coordinating the overall Department of Defense superconductivity effort. And it also calls upon the Under Secretary to ensure that DOD's research efforts are carried out in coordination with and are complementary to the efforts of the DOE and its national laboratories, the National Science Foundation, the National Aeronautics and Space Administration, and the National Bureau of Standards. The Under Secretary is also called upon to ensure that any technology resulting from the Department's high temperature superconductivity research effort is transferred to the private sector as rapidly as possible in accordance with the Federal Technology Transfer Act of 1986 and the President's Executive Order 12591, dated April 10 of this year. Finally, the amendment notes that there is a particular opportunity to utilize the national laboratories of the Department of Energy to assist in this technology transfer effort.

Mr. President, I am convinced that there is no more important research effort in the long run than this enterprise on which the various Federal agencies are now embarked in the field of high temperature superconductivity. Clearly, the Department of Defense is going to play a very major role in that effort and it is vitally important that its research activities are coordinated with those of the other Federal agencies.

I am proud of the role which the Department of Defense has already played in the area of superconductivity research. The Air Force, for example, since the mid-1960's has had an important research effort in this field. In fact, an Air Force-funded Westinghouse research project back in 1973 had led to the highest temperature superconducting material which had been achieved prior to 1986.

More important probably than the specific research results is the fact that the DOD program has funded some of the brightest scientists in the world during their graduate education and careers in this field. Paul Chu, now a professor at the University of Houston, whose name is familiar to anyone who has read the news clips on high temperature superconductivity, was supported entirely during his graduate career working under Professor Matthias at the University of California, San Diego, with Air Force funding. Brian Josephson, who discovered the so-called Josephson effect in

superconductors which may some day lead to a revolution in computer technology, received significant DOD support during his early research career.

The other Federal civilian agencies have similar stories to tell in terms of their support of superconductivity research prior to now and I am sure that a solid coordinated effort among these agencies will keep the United States at the forefront of world science and technology in this field. My amendment will help guarantee that the DOD effort which will be funded at the highest level of the Federal agencies and which will be directed primarily toward military applications will be fully coordinated with the efforts of the Federal civilian agencies and especially with those of the Department of Energy and its national laboratories.

This field is so young that it is almost impossible to separate military from civilian research at the moment. The DOD research effort will undoubtedly result in large spinoffs to civilian applications and conversely the civilian research efforts will have significant spinoffs to our defense program. Indeed, I might note that in testimony before our committee back in March, the president of the National Academy of Sciences, Frank Press, noted that in areas like temperature superconductivity, the flow from the civilian sector to the defense sector may well be larger than the technology transfer in the other direction at this time. This is in sharp contrast to the situation 20 years ago when the flow was almost entirely from the defense to the civilian sector.

Mr. President, this is a research effort that our Nation absolutely must pursue. We must pursue it knowing that success may not be easily or quickly achieved but that in the long run it will be achieved and it will have profound implications for our military security and our economic competitiveness. I would urge my colleagues to support this amendment which guarantees an absolute minimum level of DOD funding to keep this Nation at the forefront in research in this area and which will hopefully ensure close coordination between the research effort of the Defense Department and of the civilian agencies. I urge the adoption of the amendment.

I plan to offer this amendment at this point if it has been sufficiently reviewed and cleared by the managers. If they need additional time, I will withhold offering it until such time as they feel they have an opportunity to make a judgment as to whether they will oppose the amendment. I yield to my friend from Illinois.

Mr. DIXON. If my friend, Mr. President, from New Mexico will yield, may I suggest this: the distinguished Senator from California is here. He has two amendments that have already been cleared. I have one on this side of my own that has been cleared. We will dispose of his two, while he is here, together. Then we will come back to mine, if it is satisfactory to the Senator from New Mexico. That will take only a few brief moments. Then I am prepared to go to his amendment, and in the meantime, I will ask the other side while we are doing this exercise between the Senator from California and myself that their side examine the amendment of the Senator from New Mexico which has been cleared on this side.

Mr. BINGAMAN. That will be fine. Perhaps by the time you have completed those amendments, my colleague Senator DOMENICI will have an opportunity to come to the floor and also speak for a few moments on behalf of this amendment.

I yield the floor.

Mr. DIXON. Mr. President, the Senator from Indiana as the manager on the other side and myself have cleared the following two amendments: The Mather Air Force Base construction project, strike section 2817 re: Two Milcon project amendments by the distinguished Senator from California [Mr. WILSON], and the Oakland lease by the Senator from California. Those two amendments are in the possession of the Senator from California, who is on the floor, Mr. President.

AMENDMENT NO. 701

(Purpose: To strike out section 2817 of the bill relating to restriction on funds for Mather Air Force Base)

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Thank you, Mr. President. I thank my good friend, the manager, the Senator from Illinois.

Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The legislative clerk read as follows:

The Senator from California [Mr. WILSON] proposes an amendment numbered 701.

On page 191, strike out lines 15 through 24.

On page 192, line 1, strike out "SEC. 2818" and insert in lieu thereof "SEC. 2817".

Mr. WILSON. Mr. President, this is a very simple amendment. It will simply remove the fencing language on the Mather Military Air Force construction project. That is simply the operation of logic. The Air Force had thought about closing certain parts of this base. They thought better of it, and wisely so because they were really not in the position to relocate some vital training functions that were occurring there. Therefore, the scheduled military construction projects should go forward.

I know of no opposition to this amendment. I ask for its immediate adoption.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from California [Mr. WILSON].

The amendment (No. 701) was agreed to.

Mr. DIXON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. QUAYLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WILSON. Thank you, Mr. President.

AMENDMENT NO. 702

(Purpose: To authorize the Secretary of the Navy to lease certain property at the Naval Supply Center, Oakland, California, to the Port of Oakland, California)

Mr. WILSON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The legislative clerk read as follows:

The Senator from California [Mr. WILSON] proposes an amendment numbered 702.

Mr. WILSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 198, between lines 4 and 5, insert the following new section:

SEC. 2827. LEASE OF PROPERTY AT THE NAVAL SUPPLY CENTER, OAKLAND, CALIFORNIA.

(a) IN GENERAL.—Subject to subsections (b) through (g), the Secretary of the Navy may lease, at fair market rental value, to the Port of Oakland, California, not more than 195 acres of real property, together with improvements thereon, at the Naval Supply Center, Oakland, California.

(b) TERM OF LEASE.—The lease entered into under subsection (a) may be for such term as the Secretary determines appropriate, with an initial term not to exceed 25 years with an option to extend for a term not to exceed 25 years.

(c) REPLACEMENT AND RELOCATION PAYMENTS.—The Secretary may, under the terms of the lease, require the Port of Oakland to pay the Secretary—

(1) a negotiated amount for the structures on the leased property requiring replacement by the Secretary; and

(2) a negotiated amount for expenses to be incurred by the Navy with respect to vacating the leased property and relocating to other facilities.

(d) USE OF FUNDS.—(1) Funds received by the Secretary under subsection (c) may be used by the Secretary to pay for relocation expenses and constructing new facilities or making modifications to existing facilities which are necessary to replace facilities on the leased premises.

(2)(A) Funds received by the Secretary for the fair market rental value of the real property may be used to pay for relocation and replacement costs incurred by the Navy in excess of the amount received by the Secretary under subsection (c).

(B) Funds received by the Secretary for such fair market rental value in excess of the amount used under subparagraph (A) shall be deposited into the miscellaneous receipts of the Treasury.

(e) AUTHORITY TO DEMOLISH AND CONSTRUCT FACILITIES.—The Secretary may, under the terms of the lease, authorize the Port of Oakland to demolish existing facilities on the leased land and to provide for the construction of new facilities on such land for the use of the Port of Oakland.

(f) REPORT.—The Secretary may not enter into a lease under this section until—

(1) the Secretary has transmitted to the Committee on Armed Services of the Senate and of the House of Representatives a report containing an explanation of the terms of the lease, especially with respect to the amount the Secretary is to receive under Subsection (c) and the amount that is expected to be used under subsection (d)(2); and

(2) a period of 21 days has expired after the date on which such report was received by such Committees.

(g) ADDITIONAL TERMS.—The Secretary may require such additional terms and conditions in connection with the lease authorized by this section as the Secretary considers appropriate to protect the interests of the United States.

Mr. WILSON. Mr. President, this too is a simple amendment. It would authorize the Secretary of the Navy to lease certain property at the Oakland Naval Supply Center to the Port of Oakland and thereby make possible not only a very substantial economic shot in the arm to the community of Oakland, but much more to the point in the context of this defense authorization bill—to arrange for a very substantial upgrading of the Navy's mobilization capability there at this critical facility so that in time of need we would have no expense to the taxpayers a very greatly increased capability.

As it happens, this is the coordination of multi-mobile cargo transfer system involving sea and rail. The rail capacity is substantial and the lease of this property by the Navy to the Port of Oakland will permit the Naval Supply Center to reach in time of war its port mobilization requirements which is to handle 40 percent of the total west coast movement demand which happens to involve about 85 percent containerized cargo. The Port of Oakland has pioneered this containerization cargo handling. They are in a very good position to substantially improve the property for the Navy, and again I repeat at no cost to the taxpayer. I know of no opposition to this amendment. I ask for its immediate adoption.

The PRESIDING OFFICER. Is there further debate?

Mr. DIXON. Mr. President, this is in the House authorization bill. It has been cleared on this side. I would appreciate it if the President puts the question.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from California [Mr. WILSON].

The amendment (No. 702) was agreed to.

Mr. DIXON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. QUAYLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 703

(Purpose: To authorize the Secretary of the Air Force to convey certain land near Chanute Air Force Base, Illinois)

Mr. DIXON. Mr. President, I send to the desk an amendment that has been cleared on both sides and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illiinois [Mr. DIXON] proposes an amendment numbered 703.

Mr. DIXON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 198, between lines 4 and 5, insert the following new section:

SEC. . LAND CONVEYANCE, CHANUTE AIR FORCE BASE, ILLINOIS.

(a) AUTHORITY TO SELL.—Subject to subsections (b) through (g), the Secretary of the Air Force may sell all or any portion of that track of land (together with any improvements thereon) which compromises the Chapman Court Housing Annex, a housing complex near Chanute Air Force Base, Illinois, consisting of 49 acres, more or less.

(b) CONDITIONS OF SALE.—Before the Secretary enters into a contract for the sale of any or all of the property referred to in subsection (a), the prospective buyer shall be required—

(1) to carry out the following projects at Chanute Air Force Base in accordance with specifications mutually agreed upon by the Secretary and the prospective purchaser:

(A) Widen and extend Heritage Drive.

(B) Construct a new entrance gate (including a gate guardhouse) to serve as the main entrance from U.S. Route 45.

(C) Construct a visitor reception center and parking lot to serve such center.

(D) Construct new streets or alter existing streets in order to effectively reroute automobile traffic (on the Air Force Base) to and from the proposed new gate.

(c) COMPETITIVE BID REQUIREMENT AND MINIMUM SALE PRICE.—(1) The sale of any of the land referred to in subsection (a) shall be carried out under publicly advertised, competitively bid, or competitively negotiated contracting procedures.

(2) In no event may any of the land referred to in subsection (a) be sold for less than its fair market value, as determined by the Secretary.

(d) REPORT REQUIREMENTS.—(1) The Secretary may not enter into any contract for the sale of any or all of the land referred to in subsection (a) unless—

(A) the Secretary has submitted to the appropriate committees of Congress a report containing the details of the contract proposed to be entered into by the Secretary under this section; and

(B) a period of 21 days has expired following the date on which the report referred to in clause (A) is received by such committees.

(2) Any report submitted under paragraph (1) shall include—

(A) a description of the price and terms of the proposed sale;

(B) a description of the procedures used in selecting a buyer for the land; and

(C) all pertinent information regarding the appropriate project selected by the Secretary.

(e) USE OF EXCESS FUNDS.—If the fair market value of the property conveyed to a buyer under this section is greater than the fair market value of the facilities constructed by the buyer for the United States, as determined by the Secretary, the buyer shall pay the difference to the United States. Any such amount paid to the Secretary shall be deposited into the general fund of the Treasury.

(f) LEGAL DESCRIPTION OF LAND.—The exact acreage and legal description of any land conveyed under this section shall be determined by a survey which is satisfactory to the Secretary. The cost of such survey shall be borne by the buyer.

(g) ADDITIONAL TERMS.—The Secretary may require such additional terms and conditions under this section as the Secretary considers appropriate to protect the interest of the United States.

Mr. DIXON. Mr. President, I rise to offer an amendment to the fiscal year 1988 Department of Defense authorization bill that will allow Chanute Air Force Base to relocate the west gate of the base and construct a new main entrance and visitor's gate to the base at no cost to the taxpayer.

At the present time, there exists near the Chanute Air Force Base in the city of Rantoul, IL., pre-World War II housing owned by the Government called Chapman Courts. Chapman Courts is temporarily being used for unaccompanied enlisted personnel housing and family housing for lower grade enlisted personnel and their families.

It is anticipated that within the next 12 to 18 months the Air Force will provide on base living quarters, and the facilities at Chapman Court will no longer be needed. The Air Force will then no longer have a use for these 49 acres. Since this land is within the corporate boundaries of Rantoul, IL, the city has proposed that developers be allowed to purchase this land with the understanding that they must construct the following projects at the base.

(A.) Widen and extend main access road through the base.

(B.) Construct a new entrance gate and guardhouse to serve as the main entrance from the local highway.

(C.) Construct a visitor reception center and parking lot to serve such center.

(D.) Construct new street or alter existing streets in order to effectively reroute automobile traffic on the Air Force Base to and from the proposed gate.

Should it be determined that the property has a greater value than the facilities being constructed on Chanute, the developers must pay the U.S. Government for the additional land

value to be paid into the general fund of the U.S. Treasury.

I urge my colleague to support this amendment to oblige the wishes of the city of Rantoul and the Chanute Air Force Base.

Mr. President, this amendment has been cleared on both sides. It provides for the conveyance of some land for other projects at Chanute, which is land presently owned by Chanute. It has been cleared by all parties on both sides and by the appropriate service people. I think there is nothing further.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Illinois [Mr. DIXON].

The amendment (No. 703) was agreed to.

Mr. DIXON. I move to reconsider the vote by which that amendment was agreed to.

Mr. QUAYLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DIXON. Mr. President, that nicely clears up four amendments. I thank my colleague on the other side for his accommodation.

Mr. WARNER. Mr. President, I wonder if I might ask the distinguished manager of the bill and others present if we could put in a brief quorum call, I would hope maybe not to exceed 10 minutes during which time I propose to canvas my side to receive their expression of views concerning the time agreements, the quantum of time agreements that might be available to determine again the extent to which we can approach the managers' objective to have in place, as I understand it, a fixed body of work for us in order for the leadership of the Senate to consider the necessity for tomorrow's session.

Mr. NUNN. Mr. President, the Senator is correct. I think if we could take that list of amendments and get a time agreement on all of those, we will be in business.

Mr. WARNER. I thank the distinguished chairman. At this time, it just necessitates the absence from the floor of the Senator from Virginia.

Mr. DIXON. In the course of the exercise, while both managers were temporarily absent, we adopted four agreed-to amendments, two from each side. The Senator from New Mexico had presented his point of view on the amendment he was about to offer that is cosponsored by the two distinguished Senators from New Mexico, Senator DOMENICI as well as Senator BINGAMAN. And the other side was looking at the question of clearing that amendment. I wonder if we could usefully employ the 10 minutes for further discussion on that, and the offering of that amendment. We sort of agreed to go ahead with that while others were doing the other things.

Mr. WARNER. At this time, I say to my good friend the chairman that no one will be available to protect this side. Not that we need protection, but people recognize the practicalities.

Mr. PRYOR. Mr. President, before the distinguished Senator asks for a quorum call, if that is going to happen, I wonder if it would be appropriate for me to offer an amendment that may be accepted. I was trying to accommodate the managers of the bill. I could at least lay down the amendment, and once we dispose of the quorum call and go back in session, that could be the pending order. Would that be appropriate?

Mr. WARNER. Mr. President, I am not entirely clear what the content of the amendment is, whether or not it falls within the framework of the understanding the manager and I have.

Mr. PRYOR. It relates to the transfer of land around several Titan missile sites.

Mr. WARNER. I understand that this matter has been shared with this side, and it appears that it can be acted on fairly quickly. So the Senator can address that and we can put in a quorum call.

Mr. NUNN. Will the Senator from Virginia agree that this amendment can be disposed of before the quorum call or just lay down before the quorum call?

Mr. WARNER. Mr. President, if it will take only a few minutes. I have a number of Senators who wish to get into the caucus. It if is the desire of the manager, I will do that.

Mr. PRYOR. Mr. President, the Senator from Virginia is being very accommodating. I know him well and admire and respect him, and I think he would rather go ahead with his caucus before we do this amendment. I will delay offering this amendment.

Mr. NUNN. I say to the Senator from Arkansas that he can probably present his amendment in 30 seconds, and I think he should do so at this time.

AMENDMENT NO. 704

(Purpose: To provide for the disposition of real property at Air Force missile sites)

Mr. PRYOR. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Arkansas [Mr. PRYOR] for himself and Mr. BUMPERS, proposes an amendment numbered 704.

Mr. PRYOR. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 198, between lines 4 and 5, insert the following:

SEC. 2827. DISPOSITION OF REAL PROPERTY AT AIR FORCE MISSILE SITES.

(a) IN GENERAL.—Chapter 949 of title 10, United States Code, is amended by adding at the end the following:

"§ 9781. Disposition of real property at Air Force missile sites

(a) IN GENERAL.—(1) The Secretary of the Air Force shall dispose of the interest of the United States in any tract of real property described in paragraph (2) or in any easement held in connection with any such tract of real property only as provided in this section.

"(2) The real property referred to in paragraph (1) is any tract of land (including improvements thereon) owned by the Air Force that—

"(A) is not required for the needs of the Air Force and the discharge of the responsibilities of the Air Force, as determined by the Secretary of the Air Force;

"(B) does not exceed 25 acres;

"(C) was used by the Air Force as a site for one or more missile launch facilities, missile launch control buildings, or other facilities to support missile launch operations; and

"(D) is surrounded by lands that are adjacent to such tract and that are owned in fee simple by one owner or by more than one owner jointly, in common, or by the entirety.

"(b) PREFERENCE FOR SALE TO OWNERS OF SURROUNDING LANDS.—The Secretary shall convey, for fair market value, the interest of the United States in any tract of land referred to in subsection (a) or in any easement in connection with any such tract of land to any person or persons who, with respect to such tract of land, own lands referred to in paragraph (2)(D) of such subsection and are ready, willing, and able to purchase such interest for the fair market value of such interest. Whenever such interest of the United States is available for purchase under this section, the Secretary shall transmit a notice of the availability of such interest to each such person.

"(c) DETERMINATION OF FAIR MARKET VALUE.—The Secretary shall determine the fair market value of the interest of the United States to be conveyed under this section.

"(d) WAIVER OF REQUIREMENT TO DETERMINE WHETHER PROPERTY IS EXCESS OR SURPLUS PROPERTY.—The requirement to determine whether any tract of land described in subsection (a)(2) is excess property or surplus property under title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.) before disposing of such tract shall not be applicable to the disposition of such tract under this section.

"(e) ADDITIONAL TERMS AND CONDITIONS.—The disposition of a tract of land under this section to any person shall be subject to (1) any easement retained by the Secretary with respect to such tract, and (2) such additional terms and conditions as the Secretary considers necessary or appropriate to protect the interests of the United States.

"(f) LEGAL DESCRIPTION OF LANDS.—The exact acreage and legal description of any tract of land to be conveyed under this section shall be determined in any manner that is satisfactory to the Secretary. The cost of any survey conducted for the purpose of this subsection in the case of any tract of land shall be borne by the person or persons to whom the conveyance of such tract of land is made.

"(g) OTHER DISPOSITION OF PROPERTY.—If any real property interest of the United States described in subsection (a) is not purchased under the procedures provided in subsections (a) through (f), such tract may be disposed of only in accordance with the Federal Property and Administrative Services Act of 1949.".

"(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 949 of such title is amended by adding at the end the following:

"9781. Disposition of real property at Air Force missile sites.".

Mr. PRYOR. Mr. President, I rise today—along with my distinguished senior colleague from Arkansas, Senator BUMPERS—to offer an amendment to the Department of Defense authorization bill to protect the integrity of farm land holdings within which dismantled Air Force missiles sites are located. I believe this amendment is noncontroversial, having been examined by Armed Services Committee staff and others with an interest in Federal Government surplus property disposal. It is my hope this amendment can be adopted quickly.

Our amendment establishes a statutory priority for conveyance to current owners of land surrounding dismantled missile sites. Without such a priority, these individuals may find themselves owning property which contains land that would interfere with the use of the primary parcel.

The amendment will deal with Titan II sites now being dismantled in Arizona, Kansas, and Arkansas, and with the eventual closure of the Minutemen sites in North and South Dakota, Wyoming, Nebraska, Colorado, Montana, and Missouri. It therefore provides assurance to current owners and any potential purchasers that the sites will cause no problems should they be dismantled in the future.

Unless Congress approves this measure, the land will go through the normal disposal process for Federal property. This involves offering the land to other Federal agencies first, and if none have a need for the property, then the property is offered to State and local governments. Finally, the land can be offered for sale to the public through either a competitive bidding process or an auction. I believe, and I hope my colleagues will agree, that this land, surrendered by rural citizens to their government for defense purposes, should upon dismantlement be made available to the party who sold to the Government, or to the current owner.

I ask unanimous consent to have printed in the RECORD two letters from Arkansans who have Titan sites on their land:

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

For 26 years much of my land has been useless to me. 13 and one half acres have been covered by rocks (dug out of the missile hole). A road splits the land. I have been unable to sell most of my land for 26 years because it is restricted against building. After all the problems the missile site has caused, I believe the land should be given back to the original land owners.

L.E. HEFNER.

PANGBURN, AR

I would like to have the right to purchase this property. If it is sold to someone else it will continue to keep me from using property that I own but is covered by easement. If bids are taken the owner does not have an advantage to recover the land.

ODAS SMITH.

Mr. PRYOR. Mr. President, I believe these letters are representative of the sentiments which landowners across the country surely must have on this matter.

The amendment has been carefully drawn to prevent windfall profits. It essentially gives the landowner the right of first refusal. The property will be sold for what is determined by objective appraisal to be the fair market value of the land. This ensures that the Government and the taxpayer are parties to a sound business transaction, while also recognizing the important interest of the surrounding landowner. No consideration of the landowner's interest is possible under current law.

Mr. President, the Air Force fully supports this amendment. In fact the Air Force has worked closely with my staff as I developed this amendment. It is my understanding that the distinguished chairman of the Armed Services Committee, Senator NUNN, has also been contacted by the Air Force on this matter. Senator NUNN and his staff have been most helpful in this regard.

Finally, I thank the distinguished chairman of the Armed Services Committee for his assistance on, and consideration of, this amendment.

Mr. NUNN. Mr. President, this is a unique set of circumstances involving land grant ICBM sites. They are in rural areas. I understand that the Senator would be giving the people adjacent thereto first refusal, which is a departure from the normal GSA rules. But under these circumstances, I think it is warranted, and we suggest that the amendment be accepted.

Mr. WARNER. There is no objection.

Mr. PRYOR. I thank the Senators.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 704) was agreed to.

Mr. PRYOR. Mr. President, I have a second amendment regarding the facilities at the Blytheville Air Force Base.

As my good friend, the chairman of the Armed Services Committee, knows, Blytheville is the home of the Strategic Air Command's 97th Bombardment Wing and several other Air Force missions.

The community surrounding Blytheville is four square miles behind the Air Force base and the relations between the base and the town are as good or better than relations at any other base in this country. Blytheville is also located in an almost perfect location for carrying out its missions and is far enough away from urban centers to minimize problems with the noise associated with such bases.

Although Blytheville has many advantages, it seems to be at the end of the pipeline when it is time to allocate funds to upgrade military facilities. Since the base was activated in 1942, the base's responsibilities and importance has skyrocketed. My amendment seeks to help Blytheville keep up with its important responsibilities.

One of Blytheville's biggest needs is a new mission operations facility. I am not alone in recognizing this need, it is something that the Air Force has identified. My amendment, which is cosponsored by the senior Senator from Arkansas, would authorize the appropriation of $5.9 million to begin work on the facility.

I understand that the House authorization bill provides for construction of the mission operations facility and I hope that the Senate will accept this amendment as well.

Mr. NUNN. I thank the Senator from Arkansas for bringing the needs of the Blytheville Air Force Base to our attention here tonight. Blytheville is indeed a base of great importance to the Air Force and to the defense of this Nation. I am aware of the need to upgrade aging facilities at Blytheville and to build new facilities to meet current and expected needs.

The money the Senator requests to build the missions operations facility at Blytheville is in the Air Force budget request, but it is in the request for fiscal year 1989. I am very interested in accommodating the Senator but would respectfully ask that the Senator allow the Armed Services Committee to consider this request in the context of the fiscal year 1989 military construction requests.

I can assure the Senator that this Senator will make every effort to see that the mission operations facility and other proposals to bolster the Blytheville Air Force Base receive careful and favorable consideration in the coming year.

Mr. PRYOR. Am I to understand that the Senator is saying that the committee would oppose this amendment at this time?

Mr. NUNN. Unfortunately, I must state that such is the case. However, I will give my personal assurance that the committee will remember this discussion and give the funding request

special consideration in the coming year.

Mr. PRYOR. I respect the Senator and his word and thank him in advance for his efforts on this matter. I will not push this amendment to a vote today, but will state again that this issue is very important to me and the men and women who serve our Nation at Blytheville.

I look forward to working with the chairman and his staff when the fiscal year 1989 military construction budget is being discussed.

Mr. DOMENICI. Mr. President, I might first compliment my colleague for offering the amendment.

This amendment, with reference to superconducting research as it applies to the military and the Department of Defense, is much needed. The President of the United States is to be commended because as far as superconducting research and the Department of Defense, he has included substantial amounts of money in his budget.

My colleague, Senator BINGAMAN, in our amendment, focuses and directs it and makes sure that this important research is managed properly and is directed at the right activities within the Department of Defense.

So I think this is one of those few occasions where, when we here in the Congress are asking that we do more research, especially in some of these very new cutting edge activities and scientific breakthroughs, we should have a happy marriage because we are not having to increase to any significant degree the President's request.

This amendment just takes care of some of the shortcomings and vagaries that have accompanied some of our research activities in the Department of Defense and elsewhere and in particular in these new cutting edge sciences.

So I compliment my colleague for that.

We all know in the last 6 or 8 months that much is being said about scientific and technological breakthroughs and our economic future.

I think it is becoming generally understood here in Washington, by those who are involved in committees that have jurisdiction in research areas, that the time has come when we can no longer compartmentalize our research. We cannot have our national laboratories off doing their own thing, the universities and academia doing theirs and the private sector off doing its. If we do not find some way to measure those activities better than we have in the past, clearly we are not going to take advantage of our knowledge breakthroughs quickly enough to significantly affect our competitiveness and give us a better opportunity to bring these new technologies into the marketplace.

I think that is becoming well-known. So, I rise in support of the amendment, and point out that it is a step forward and that it directs the Department of Defense to take every step possible to expedite the transfer of technology that may result from this research activity. Nonetheless, I think it is fair to say that at least in my opinion, we are a long way from effective utilization of the Department of Energy's nine national laboratories that do significant defense work, to which I expect some of this superconducting research will go. We are a long way from changing a national culture that has sort of developed around them.

Frequently, private sector activities are going on in the same community—in the same area that the Department of Energy's labs are working, be it the one in Berkeley or New York or Chicago or the two in New Mexico—and there is no collaboration, I believe that is the case because, by design, they have been user unfriendly.

The national labs were supposed to accomplish their mission and as far as the private sector, it was to accomplish its mission. We all must engage in changing in a dramatic way the culture of both. And then, we must also work the academic community into the equation.

There are some pilot projects beginning around the country to see how we can do it. We have billions of dollars invested in these national laboratories with the best scientists in the country. These scientists have expanded the purposes of the labs in the past during national crises. Although we have this broad array of talent, this fantastic technological capacity, we still have a long way to go to make the activities of the labs available to the private sector without doing damage to our national security. This must be done in an expeditious way by the private sector and the universities, both by way of knowledge exchange and property right acquisition, so the private sector will be interested in taking advantage of it because it might mean marketplace activities.

As I indicated, the amendment that we offer does direct that every advantage be taken to get this into the marketplace and to use private sector relationships. Clearly that whole set of activities is in an extreme quagmire in the Department of Defense because our technology transfer laws are being read narrowly.

Instead of proceeding expeditiously with waivers, they proceed at a slow pace. When they can protect an area of activity, they are always on the side of protecting it to the maximum extent. My best guess is that fully 60 percent of these national laboratories' work is exempt from private sector activity and private proprietary right acquisitions and the waiver process is taking an inordinately long time.

I am not prepared to say how long it is now because my last information is 1986 information which GAO obtained in their reports. But clearly we have got to take far more advantage of these activities if we are going to ulitize our knowledge base and move it through enabling technology into the marketplace.

I am very hopeful that this amendment will succeed in effecting the coordination of all of our superconducting activities. By designating two of our national labs as lead labs in superconducting research, and designating the Los Alamos scientific lab as a pilot laboratory to attempt to work out private sector and university arrangements, that this money will be used in the most fruitful and productive manner. In that way we will capitalize, as a nation, not only in our defense but in the area of developing this cutting edge technology for the American marketplace.

Mr. President, I understand that we are still trying to work out with the floor manager on this side the acceptability of this amendment. I hope the distinguished senior Senator from Virginia will accept it. I do not believe we are going to get a defense bill through on the appropriations side that does not put some money into superconducting activity because, if nothing else, we are afraid that some of these critical technologies of the eventuality of not having some of our defense will not be available if we do not act. This is the kind of technology that could have broad ramifications, positive and negative, depending upon how it comes out for our defense.

So we are going to put some money in to encourage research and market applications. I think this is a modest initiative. It follows the President's recommendations dollarwise and I think it ought to be accepted here today.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 705

(Purpose: To set aside funds for a Department of Defense high-temperature superconductivity research and development program)

Mr. BINGAMAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN], for himself and Mr. DOMENICI, proposes an amendment numbered 705.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 22, between lines 8 and 9, insert the following new section:

SEC. 229. DEPARTMENT OF DEFENSE HIGH-TEMPERATURE SUPERCONDUCTIVITY RESEARCH AND DEVELOPMENT PROGRAM.

(a) AUTHORIZATION.—(1) Of the funds appropriated or otherwise made available to the Department of Defense pursuant to section 201 for research, development, test, and evaluation, $60,520,000 of the amount appropriated for fiscal year 1988 and $60,520,000 of the amount appropriated for fiscal year 1989, may be obligated only for research and development relating to superconductivity at high critical temperatures.

(2) Of the amount that may be obligated under paragraph (1) for each of fiscal years 1988 and 1989, $10,520,000 may be obligated only for support of research and development activities that—

(A) are conducted under the superconductor program of the Defense Advanced Research Project Agency of the Department of Defense or under the superconductor program of any other entity involved in superconductor research and development; and

(B) accelerate advanced development of superconductor technology to support the Electric Drive program of the Department of Defense.

(b) ADMINISTRATIVE PROVISIONS.—(1) The Secretary of Defense shall determine, with respect to the amounts appropriated or otherwise made available to the Army, Navy, Air Force, and Defense Agencies pursuant to section 201 for research, development, test, and evaluation for each of fiscal years 1988 and 1989, the amount to be derived from the Army, Navy, Air Force, and each of the Defense Agencies in each such fiscal year to carry out the high-temperature superconductivity research and development activities of the Department of Defense under this section.

(2) The Under Secretary of Defense for Acquisition or his designee shall—

(A) coordinate the research and development activities of the Department of Defense relating to high-temperature superconductivity; and

(B) ensure that such research and development—

(i) is carried out in coordination with the high-temperature superconductivity research and development activities of the Department of Energy (including the national laboratories of the Department of Energy), the National Science Foundation, the National Bureau of Standards, and the National Aeronautics and Space Administration; and

(ii) complements rather than duplicates such activities.

(c) The Under Secretary of Defense for Acquisition shall take appropriate action—

(1) to ensure that high-temperature superconductivity technology resulting from the reseach activities of the Department of Defense is transferred to the private sector in accordance with (A) the amendments made by the Federal Technology Transfer Act of 1986 (Public Law 99-502; 100 Stat. 1785) to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.), and (B) Executive Order Number 12591, dated April 10, 1987; and

(2) in consultation with the Secretary of Energy, to ensure that the national laboratories of the Department of Energy participate, to the maximum appropriate extent, in the transfer of such technology to the private sector.

Mr. BINGAMAN. Mr. President, this is the amendment related to the Department of Defense effort in research in high-temperature superconductivity, which I have spoken about, and which my colleague, Senator DOMENICI, has spoken about. I believe the amendment is acceptable on both sides at this point. Unless there is additional debate that someone has, I believe we are ready to vote.

The PRESIDING OFFICER. Is there further debate?

Mr. DOMENICI. Mr. President, I have spoken with the distinguished Republican manager, Senator WARNER, and he indicates he has no objection to the amendment.

Mr. President, I have already given my remarks and have no further remarks.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. WIRTH. Mr. President, this amendment has been reviewed by both managers and reviewed by the majority of the committee. We strongly support the adoption of the amendment. We do commend the two Senators from New Mexico, Senator DOMENICI and Senator BINGAMAN, and hope the amendment is agreed to.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 705) was agreed to.

Mr. BINGAMAN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOMENICI. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WIRTH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DIXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BREAUX). Without objection, it is so ordered.

Mr. DIXON. Mr. President, may I say to my friend, the distinguished Republican manager, the Senator from Indiana, that the majority leader, the ranking member, and the chairman are in the majority leader's office now going over those provisions of the general parameters of the unanimous-consent agreement that had been discussed with the Senator from Indiana and others. I was not a participant, but I know generally the things involved therein.

I understand the distinguished Senator from Wyoming has an amendment that may be agreed to. I am not positive about that, but I think that is correct. I understand that the Senator from North Carolina has an amendment he would like to consider today and have a vote on. And I believe that the Senator from Connecticut, Senator WEICKER, has an amendment that we could go to today and vote on.

I believe that, while I cannot speak for the leadership, it would be the sense of this side, if it is the sense of that side, that if we could dispose of the agreed amendment, should it be an agreed amendment, by the Senator from Wyoming, and the disputed amendments by the distinguished Senator from North Carolina and the distinguished senior Senator from Connecticut, we might conclude today's business. Then there could even be more pleasant announcements that others would have the power to suggest at a later date to my colleagues.

What does my friend from Indiana say to that?

Mr. QUAYLE. I have no problem with the amendment of the Senator from Wyoming, which I understand is going to be accepted. The Senator from North Carolina then has his amendment ready and I believe that the Senator is prepared to enter into a 1-hour time agreement with no amendments thereto which I think is understood.

Mr. HELMS. Or less.

Mr. QUAYLE. Or less.

Mr. DIXON. This is satisfactory.

Mr. QUAYLE. The Senator from Connecticut has a couple of amendments floating around here. I am not exactly sure which one—I do not like either one of them—but I am not sure which one we are talking about.

Mr. DIXON. Why do we not worry about that latter? I have here a statement from the chairman of the committee to go in the RECORD supportive of the amendment by the Senator from Wyoming, so I think we are ready to roll on that. Then if we could go to the Senator from Carolina, that will keep us occupied while we find out what the Senator from Connecticut is doing.

Mr. QUAYLE. OK. At this time, do you want to propound a unanimous-consent request?

Mr. DIXON. What is your pleasure, may I ask my friend?

Mr. HELMS. Not to exceed 1 hour, equally divided.

Mr. DIXON. May I request that a tabling motion be in order until I see how the chairman feels about it?

Mr. HELMS. Yes.

Mr. DIXON. There is no problem with that at all.

Mr. QUAYLE. Then I ask unanimous consent that, upon the disposition of the Wallop amendment, the

Senator from North Carolina be recognized and his amendment be in order and that the time agreement be not more than 1 hour, equally divided, with no amendment thereto.

Mr. DIXON. And a tabling motion is in order, Mr. President.

The PRESIDING OFFICER. Is there objection to the Senator's request? Hearing none, it is so ordered.

The Chair recognizes the Senator from Wyoming, Senator WALLOP.

AMENDMENT NO. 707

(Purpose: To require a report on how the absence of any ABM Treaty limitations would effect the Strategic Defense Initiative Program)

Mr. WALLOP. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. WALLOP], for himself and Mr. WILSON, proposes an amendment numbered 707.

Mr. WALLOP. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

On page 114, between line 13 and 14 insert the following:

(a) REPORT ON NO ABM TREATY LIMITATIONS.—The Secretary of Defense shall submit to Congress a report concerning the effect of no ABM Treaty limitations on the Strategic Defense Initative Program.

(b) MATTERS TO BE INCLUDED.—The report shall include the following:

(1) An analysis of the ramifications of no ABM Treaty limitations on the development under the Strategic Defense Initiative program of strategic defenses, including comprehensive strategic defense systems, and more limited defenses designed to protect vital United States military and command and control assets. This analysis should compare research and development programs pursued under the restrictive interpretation, the less restrictive interpretation, and no ABM Treaty limitations, including a comparative analysis of—

(A) The overall cost of the research and development programs,

(B) The schedule of the research and development programs, and

(C) The level of confidence attained in the research and development programs with respect to supporting a full-scale engineering development decision in the early- to mid-1990s.

(2) A list of options under no ABM Treaty limitations that meet one or more of the following objectives:

(A) Reduction of overall development cost.

(B) Advancement of schedule for a full-scale engineering development decision.

(C) Increase in the level of confidence in the results of the research by the original full-scale development date.

(c) DEADLINE FOR REPORT.—The report under subsection (a) shall be submitted not later than March 1, 1988.

(d) REPORT CLASSIFICATION.—The report under subsection (a) shall be submitted in both classified and unclassified versions.

Mr. WALLOP. Mr. President, last year I proposed an amendment requiring that the Secretary of Defense produce a report on how the SDI Program would be effected if the administration were to move to the legally correct interpretation of ABM Treaty.

The report did not prejudice in any way to outcome of the debate we have focused so much attention on over the last 5 months. It merely asked the question, "Would we save any time or money, and would we increase our confidence in any strategic defense we might consider deploying in the 1990's, if we moved programmatically to the broad interpretation.

I believed it was important to have that information, both because it would have a bearing on the debate over the interpretation issue, and more importantly because it would provide Senators with needed information about what we can do to speed the development of the strategic defenses we so vitally need.

Mr. President, my amendment to last year's DOD bill was accepted without debate by both sides of the Chamber. The report was delivered to the Senate in May of this year. Unfortunately the contents of the report are classified, and I encourage my colleagues to read the report. But the findings were summarized in an unclassified cover letter. The report concludes that moving to the broad interpretation of the treaty will reduce overall costs and will allow for significantly greater program efficiency. At least $3 billion dollars can be saved in establishing the feasibility of an initial, incremental defense against ballistic missiles. And with that money, over two years in time can also be saved.

The most striking conclusion to me, Mr. President, is that each month our legal right to conduct research remains limited by the restrictive interpretations, we must swallow a 2-month delay in the deployment of defense based on the results of our research. It is difficult for this Senator to understand how some of my colleagues can oppose moving to the legally correct interpretation of the ABM Treaty yet support a strategic defense for the United States.

Today, Mr. President, I am offering a similar amendment. In fact, the wording is almost identical with that the Senate passed last year. This year, however, the basic question has changed. This year, Mr. President, I thought that the Congress should have a report on how the SDI Program would be conducted differently, and what the benefits might be, if any, of no ABM Treaty limitations. We all know that if we are to one day deploy a robust strategic defense, the ABM Treaty must be either modified or abrogated. Many scholars, and I suspect many inside this administration, have debated the question as to when we ought to take that step. It is my hope that this report will shed some light on that question.

Most of my colleagues in this Chamber support SDI. A majority of them have voted consistently for SDI budgets far in excess of what would be needed for a level of effort technology program. The objective of the SDI Program is not just to maintain a hedge against Soviet ABM breakout, but to actually make a decision to build antimissile devices to protect this country. I have been advocating for almost a decade that such defenses be built, and with all speed. Be that as it may, we in the Senate must at least contemplate a world without the ABM Treaty. This report will hopefully provide us with some of the needed information to face that world with greater confidence.

The requested report does not ask whether we should abandon the ABM Treaty. Nor does it ask for a time when such a withdrawal would be optimum. It merely asks what effect would the absence of ABM Treaty constraints have on the SDI Program.

I cannot tell Senators what the answers to the questions posed in this report are. But if they are as significant as the report requested in last year's DOD bill, I think we would be skirting our responsibility to the American people not to ask these questions of the administration.

Mr. President, basically what the amendment intends to do is to ask for a further report. I have consulted both the majority and minority on this. It is my understanding, with the statement by the chairman of the committee, that the amendment is agreeable on both sides.

The PRESIDING OFFICER. Is there further debate?

Mr. NUNN. Mr. President, I am prepared to accept the amendment.

We had a similar reporting requirement last year which was included in the authorization act and the Congress received that report this summer.

The Senator's amendment this year would go beyond last year's report and require information on how SDI testing would be conducted if there were no ABM Treaty.

In accepting this amendment, I am not recommending that the U.S. abrogate the ABM Treaty—just as in accepting last year's Wallop amendment dealing with testing under the broad interpretation I was not recommeding that we make that switch.

As I have said before, though, we cannot rule out the possibility of having to deploy some types of strategic defense, so Congress should have

information about that option as it considers the future course of SDI and the ABM Treaty.

I would say, in concluding, that I hope the report that would be submitted under this amendment is more credible than the last Wallop report, which was extremely assumption—dependent and, in my opinion, driven more by ideological considerations than technical objectivity. I think the next report must be able to stand up to impartial and informed technical review.

Mr. DIXON. Mr. President, there is no objection on this side. This side supports the amendment of the Senator from Wyoming.

Mr. QUAYLE. Mr. President, I wish to congratulate the Senator from Wyoming on his amendment. He has been a stalwart in this area on trying to promote the strategic defense initiative. As a matter of fact, he has probably been on this as much as anybody and early on, ever since he has come to the Senate, he has focused on trying to get some defenses, not only research but actually developed and eventually deployed.

I think this report will go a long way to perhaps answer some questions that some may have, because we have had the situation of those who support defenses and eventually deployment of defenses and there are certain incompatibilities with the ABM Treaty.

I congratulate the Senator on the amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment of the Senator from Wyoming [Mr. WALLOP].

The amendment (No. 707) was agreed to.

Mr. WALLOP. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DIXON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, I thank the Chair for recognizing me. I understand there has been a unanimous consent with reference to the time limitation on this amendment.

The PRESIDING OFFICER. The Senator is correct.

Mr. HELMS. Not to exceed 1 hour, equally divided?

The PRESIDING OFFICER. The Senator is also correct.

Mr. HELMS. I thank the Chair.

AMENDMENT NO. 708

(Purpose: To redeploy 50 stockpiled Minuteman III missiles into existing Minuteman II silos in order to en-hance the strategic modernization program at no additional cost and to release 50 Minuteman II missiles for testing to support the reliability and effectiveness in the aging Minuteman II force)

Mr. HELMS. Mr. President, I learned the hard way last night to be leery of two voices in the administration speaking once saying different things about the endorsement of legislation. Maybe that will happen again today. I don't know yet.

So, therefore, I have an amendment at the desk which I will call up and ask to be stated. And we will find out.

The PRESIDING OFFICER. The clerk will report the amendment of the Senator from North Carolina.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 708.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

Add at the end of the bill the following new section:

"SEC. —. Of the funds appropriated for operations and maintenance to the Air Force pursuant to section 301(a)(4), one-tenth of one percent of the amount appropriated for fiscal year 1988 and one-tenth of one percent of the amount appropriated for fiscal year 1989 may be obligated only to redeploy 50 stockpiled Minuteman III missiles into existing Minuteman II silos in order to enhance the strategic modernization program at no additional cost and to release 50 Minuteman II missiles for testing to support the reliability and effectiveness in the aging Minuteman II force.".

Mr. HELMS. Mr. President, just at the outset, let me document the full support of the administration of this amendment. Maybe this time there won't be confusion or another self-inflicted wound brought about by discord in the administration.

First, I am going to ask Mr. Sullivan to hold up a slightly enlarged text of a letter from Cap Weinberger, Secretary of Defense.

Then, if you raise the other letter, blown up to about the same size. This is a letter from Department of the Air Force endorsing this amendment.

I ask unanimous consent that the text of these letters be printed in the RECORD at this point. I assume there will not be any disagreement.

There being no objection the letters were ordered to be printed in the RECORD, as follows:

THE SECRETARY OF DEFENSE,
Washington, DC, September 9, 1987.

Hon. JESSE A. HELMS,
U.S. Senate,
Washington, DC.

DEAR SENATOR: Thank you for your letter of June 24. Your proposal to retrofit Minuteman III missiles into Minuteman II silos has merit and has indeed been advocated by the Air Force in the past. The Department of Defense believes it would be useful to redeploy the 50 Minuteman IIIs being displaced by Peacekeeper. In fact, reentry vehicles and other assets have been protected to support a potential, future redeployment of 50 Minuteman IIIs.

The benefits cited in your letter—additional number of more capable warheads, the relative economy of this redeployment, and a revitalization of the Minuteman II flight test program—are attractive. Indeed, there is a significant need for additional Minuteman II test assets. Releasing 50 operational Minuteman II missiles would be of major benefit to our ability to support a reliable and effective Minuteman II force.

The 150 additional Minuteman III warheads would undeniably be more capable against hardened targets than the 50 Minuteman II warheads they displace, and, thus, would constitute a valuable adjunct to the strategic modernization program. As you know, however, the Minuteman IIIs are far less counterforce-capable than Peacekeeper. Therefore, in view of the expanding Soviet threat, the full strategic modernization program remains our priority.

We share a common goal in providing the best possible defense for our country. Our pursuit of that goal is best served by continued cooperation, and I look forward to working with you in this worthy endeavor.

Sincerely,

CAP.

DEPARTMENT OF THE AIR FORCE,
Washington, DC, June 15, 1987.

Mr. QUENTIN CROMMELIN,
Counsel, Minority Staff, Senate Foreign Relations Committee, U.S. Senate, Washington, DC.

DEAR MR. CROMMELIN: The Air Force supports the President's plan for ICBM Modernization which currently calls for deployment of 50 Peacekeepers in Minuteman silos and development of Small ICBM and the Peacekeeper Rail Garrison basing mode. We sincerely appreciate Senator Helms' support in pursuit of these ICBM Modernization goals.

The current plans for ICBM Modernization do not include a displacing of Minuteman IIs with Minuteman IIIs. That approach, last proposed in the early 1980s, was disapproved by Congress in 1983.

The Air Force would not be opposed to a reinvestigation of displacing MM IIs with MM IIIs as an addition to the modernization program. Because the Air Force needs to maintain sufficient spares and assets for testing to ensure the reliability and accuracy for the life of the MM III system, 50 MM IIIs would be the maximum deployable. Our estimate is that retrofit of 50 missiles would take about 2 years and cost approximately $50M.

We hope that this information proves useful.

ROBERT F. RAGGIO,
Colonel, USAF, Chief, Weapon System Liaison Division, Office of Legislative Liaison.

Mr. HELMS. Mr. President, I offered this amendment on one other occasion and the water got muddied just a bit because two Senators arose to say that the Air Force "adamantly opposed it" and I quote them in saying adamantly and the Pentagon opposed it. I do not quite know what the distinction between the two may be. But in any event that is what the Senate was told.

The amendment was unwisely not accepted at that time. I just want to make it clear this time that we checked all the bases. It is a good amendment. It is cosponsored by the distinguished Senator from Idaho [Mr. SYMMS], the distinguished Senator from Wyoming [Mr. WALLOP], the distinguished Senator from Utah [Mr. GARN], the distinguished Senator from New Hampshire [Mr. HUMPHREY], the distinguished Senator from Utah [Mr. HATCH], the distinguished Senator from Idaho [Mr. MCCLURE], and I believe Senator NUNN, the distinguished chairman, supported this proposal in the Armed Services Committee when it was first agreed to in that Committee in early 1980.

Now, I shall proceed.

This amendment is intended to assure the continuation of a program that is essential to the defense of the people of the United States. And at the same time, this amendment is extremely cost-effective in defense dollars.

I refer to retrofitting 50 stockpiled, MIRV'd Minuteman III Inter-Continental Ballistic Missiles in existing single-warhead Minuteman II ICBM silos.

This amendment will be a measure of the will and resolve of the Senate in taking those actions necessary to deter the Soviet threat to the people of the United States. I ask for my colleagues' support in this crucial effort, because it is vital to insuring that the Senate signals a position of deterrent strength to the Soviet Union, rather than the position of weakness we have signaled all too frequently in recent decades.

I hope that a majority of Senators will join with us in perceiving the strong logic of this proposal, and I hope that they will recognize its importance in demonstrating our intention to maintain a clearly viable, powerful strategic nuclear deterrent.

Mr. President, as Senators will remember, on May 28, 1987, I offered an amendment to resume the fiscal year 1983 program for limited retrofitting of Minuteman III ICBM's into Minuteman II silos. As we recall, about 130 Minuteman III's are stockpiled, and an additional 50 Minuteman III's are now being stockpiled further, as a result of MX ICBM deployment in Minuteman III silos. Thus there will soon be about 180 stockpiled Minuteman III MIRV'd ICBM's.

It has long seemed to me that approximately 180 stockpiled Minuteman III's were excessive, and that many of these perfectly serviceable ICBM's should be put to some military use.

I would remind Senators that the present U.S. ICBM force structure consists of only 450 Minuteman II's deployed, only about 536 Minuteman III's, and only about 14 MX "Peacekeeper" ICBM's deployed, for a U.S. total of only 2,198 ICBM warheads. This compares with a Soviet deployment of from 6,500 to over 8,000 ICBM warheads, almost a 4 to 1 numerical ratio in Soviet favor. This is the most important measure of military power in the world today.

When we began the deployment of the Minuteman III's 17 years ago in June 1970, the original intent was to complete deployment at the level of 1,000 Minuteman III MIRV'd missiles. But by 1975, only 550 Minuteman III's had been retrofitted into Minuteman II silos, and it was necessary to stockpile more Minuteman III's for retrofitting to be continued. About 130 had been stockpiled, before the Carter administration stopped the production of Minuteman III's and broke up the machine tools and production line in 1978 in anticipation of SALT II.

But in August 1979, the United States detected a Soviet Combat Brigade in Cuba. The ratification process on the SALT II Treaty was derailed. In late 1979, the Senate Committee on Armed Services declared that the SALT II Treaty was "not in the national security interest of the United States." Just after this statement, the Soviets invaded Afghanistan. The SALT II Treaty could not be ratified, because two-thirds of the Senate would not give its advice and consent, as Senator MOYNIHAN pointed out.

The approximately 130 Minuteman III's are still stockpiled, and there will soon be about 180, as 50 MX ICBM's are retrofitted into Minuteman III silos. Some of us have long recognized the need to put these stockpiled missiles to some useful military purpose. Therefore, in 1980, Congress in the fiscal year 1981 Defense authorization bill authorized the retrofitting of at least 50 but to up to 100 of the 130 stockpiled Minuteman III missiles into the existing Minuteman II silos.

Mr. DIXON. Would my friend from North Carolina yield for a moment?

Mr. HELMS. Sure.

Mr. DIXON. I am very embarrassed to interrupt my dear friend. I think the membership is interested in knowing what is going to happen here in the balance of the day, if I can take one moment to interrupt you to let the folks know at 5 o'clock, because I think some are wondering what is happening.

Mr. HELMS. I think that is a good idea, Senator. Why do not you proceed.

Mr. DIXON. There definitely will be a rollcall on your amendment, Senator. Since we have an hour time limit that is going to occur somewhere around 6 o'clock.

The Senator from Connecticut [Senator WEICKER] was just in the Chamber, and has advised me that he will be ready on an amendment and that will also be a disputed one. So I would caution my colleagues that there will be two more recorded rollcalls and we would expect that the work will be completed in about 2 hours. I apologize. Let me say I assume, on the basis of all I have said, that the unanimous-consent agreement now being discussed in the majority leader's chambers will be agreed to.

On that assumption I am saying if we get a unanimous-consent agreement, which presently is pretty well in final form and has been diligently worked on on both sides, then we will vote on the Senator's amendment somewhere between now and 6, and on one more amendment, probably 7, and the membership is on notice that there are two more rollcalls.

I apologize to the Senator.

Mr. HELMS. No apology needed at all. I think it will be earlier than 7 o'clock because I will not take all my time.

Perhaps I missed something in the translation, but I thought I asked the Chair if there was a unanimous-consent agreement already on this amendment.

Mr. DIXON. Yes. On your amendment there is.

Mr. HELMS. The Senator is talking about the Weicker amendments.

Mr. DIXON. May I say to the Senator there is a unanimous-consent agreement covering about 10 or 12 very contentious amendments where each will be 2 hours in length, or several hours, which is being worked on right now, which will cover our work schedule next week. We have a separate unanimous-consent agreement on the Senator's amendment which is 1 hour, and one more agreement after that with Senator WEICKER.

Mr. HELMS. I thank the Senator.

Mr. President, I know as I proceed for 2 or 3 additional minutes, the manager will be so absolutely persuaded by this amendment that he and the other manager will see that they should accept it without even a rollcall. That remains to be seen.

Mr. QUAYLE. Will the Senator yield for a question?

Mr. HELMS. Yes.

Mr. QUAYLE. During the last couple of days we have heard a lot of discussion about the law of the land, the ratified ABM Treaty, the War Powers Act. I would like to ask the

Senator about his observation of this violating any laws that the United States might have, in his judgment.

Mr. HELMS. None whatsoever. As a matter of fact, it is just the resumption of statutory authority which existed previously.

In 1981, $5 million was appropriated by Congress to begin this retrofitting. A total of only $50 million would have been required for the retrofitting of 50 to 100 Minuteman III's. Most of the $50 million, however, was intended to install so-called functionally related observable differences [FROD's] required under SALT II to differentiate MIRV'd Minuteman III silos from non-MIRV'd Minuteman II silos under SALT II counting rules. The FROD's involved were for distinctive antennas, which are no longer necessary now that SALT II is dead, and the FROD's can be eliminated. Indeed, most of the funding in my amendment is for the FROD's, even though FROD's are no longer required.

Mr. President, the Minuteman III retrofitting program moved forward in 1981, and in 1982 the Air Force requested $20 million more out of the $45 million additional funding that was necessary for the whole project.

However, the Soviet Union complained to the United States through diplomatic channels that actual U.S. retrofit of any of these 50 to 100 stockpiled Minuteman III MIRV'd ICBM's could place the United States in violation of the unratified SALT II Treaty by 1985. Nevertheless, the administration stood by its request to continue the retrofit.

Unfortunately, a few Members of Congress quietly decided not to fund the program for fiscal year 1983, without giving Congress a chance to vote on continuing the already—already—authorized and already appropriated program. It was one of these ships that pass in the night. Or perhaps, a slip between the cup and the lip—as it were.

I have long believed that 180 stockpiled Minuteman III's were grossly excessive for reliability testing purposes, and that it was extremely wasteful of the taxpayer's hard-earned money that these missiles had not been put to some more immediately useful military purpose.

Mr. President, let me, just for a point of emphasis, repeat that the United States total ICBM warheads is 2,198 compared to the Soviet deployment of the same ICBM warhead being at least 6,500 and probably the Soviets have more than that—some experts think that over 8,000 is the best estimate.

I was supported in that view to which I just referred by the White House last May, which gave me, through its office of legislative affairs, the go-ahead to offer my amendment on May 28, with the statement that there was not opposition to my proposal from the administration.

Subsequently, on the floor of the Senate, our distingished colleague, Senator BUMPERS made the statement that the Department of the Air Force adamantly opposed my amendment. Senator LEAHY made a similar assertion. The subsequent vote in the Senate may well have been influenced by those assertions, which we now know to have been made in error.

I have been informed by a letter from the Air Force dated June 15, 1987, that "The Air Force would not be opposed to a reinvestigation of displacing Minuteman II's with Minuteman III's as an addition to the strategic modernization program." Moreover, both the Air Force and its Strategic Air Command actually advocated the retrofit of stockpiled Minuteman III ICBM's in Minuteman II silos from 1980 through 1983.

More significantly, I have also received a letter dated September 9, 1987, from our Secretary of Defense, Caspar Weinberger. I would like to quote from this letter at some length, in order to clear up any misunderstanding that may have been created during the Senate debate last May.

Secretary Weinberger states:

> Your proposal to retrofit Minuteman III missiles into Minuteman II silos has merit, and has indeed been advocated by the Air Force in the past. The Department of Defense believes it would be useful to redeploy the 50 Minuteman IIIs being displaced by Peacekeeper. In fact, reentry vehicles and other assets have been protected to support a potential, future redeployment of 50 Minuteman IIIs. The benefits cited in your letter—additional number of more capable warheads, the relative economy of this redeployment, and a revitalization of the Minuteman II flight test program—are attractive. Indeed, there is a significant need for additional Minuteman II test assets. Releasing 50 operational Minuteman II missiles would be of major benefit to our ability to support a reliable and effective Minuteman II force. The 150 additional Minuteman III warheads would undeniably be more capable against hardened targets than the 50 Minuteman II warheads they displace, and, thus, would constitute a valuable adjunct to the strategic modernization program.

I now intend to pursue this proposal for continued Minuteman III retrofit, because its logic is compelling. Mr. President, in a moment I will ask for the yeas and nays on my amendment.

Mr. President, I would remind the Senate that it is over a year since May 27, 1986, when the administration wisely decided to end its unilateral compliance with the unratified SALT II Treaty. That carefully deliberated decision was based on an expanding pattern of 22 separate Soviet violations of SALT II confirmed to the Congress by the President. A 23d and a 24th Soviet SALT II violation have just recently been confirmed, when the Soviets exceeded the 820 and the 1,200 SALT II MIRVed missile sublimits.

So the expanding pattern of Soviet SALT II violations has continued to expand. It is important to note that the Soviets exceeded the 820 sublimit on MIRVed ICBM's with their deployment of their railmobile, MIRVed SS-24 ICBM in early October 1986, over 1 month before the United States exceeded the SALT II sublimit of 1,320 on November 28, 1986. I will provide a summary of the 24 confirmed Soviet SALT II violations at the end of my statement. But with the continuously expanding pattern of confirmed Soviet SALT II violations finally forcing the United States to abandon its unilateral compliance with SALT II, the only reason for delaying the already requested, authorized, appropriated, and initiated retrofit of stockpiled Minuteman III's is finally gone. SALT II is dead, due to the Soviet violations.

Mr. President, my amendment does not cost any additional funding under this bill. It merely fences $42.5 million of Air Force operations and maintenance funds to continue over a 2-year period a program previously requested by the administration and authorized and appropriated by the Congress. The amount fenced each year is less than one-tenth of 1 percent of the Air Force operations and maintenance account. The program was initiated in 1981, with the expenditure of an initial $5 million.

Upon completion of the retrofitting, the U.S. ISCBM force will have 150 additional warheads deployed, for a total of 2,348 U.S. ICBM warheads. Unfortunately, this is an extremely modest incremental addition, in light of the current Soviet force structure of 6,500 to 8,000 ICBM warheads. It would cost billions of dollars to start up the Minuteman III production line and build new ICBM's; but for very modest funding and no additional cost we can deploy at least 50 stockpiled MIRVed ICBM's, and make sure that they can be used to improve significantly our deterrence of any attack on the American people.

Mr. President, now that the Senate has a better picture on this issue, I urge my colleagues to vote in favor of this amendment. I repeat: This amendment would merely continue a program that the administration has requested, and for which the Congress has already voted to authorize and appropriate funds. There are many compelling, logical reasons.

First, the United States is no longer unilaterally complying with the unratified and expired SALT II Treaty, which President Reagan has confirmed to Congress that the Soviets had previously violated in 24 instances. There was an expanding pattern of Soviet SALT II violations from 1979 to 1985, and this expanding pat-

tern of Soviet violations unfortunately has continued to expand in 1986 and 1987. Thus there are now no SALT II arms control constraints on this U.S. unilateral retrofit program. This retrofit would be a very modest response.

Second, this amendment would merely resume an already initiated process of retrofit that would add at least 50 MIRVed Minuteman III ICBM's to the American retaliatory force, for the very low cost of only $42.5 million. This would be the lowest cost strategic deployment by far in the history of American strategic deterrent forces.

The cost would be only about $250,000 per additional deployed warhead, compared to about $43 million per deployed MX warhead, about $10 million per deployed B-1B bomber warhead, and about $8 million per deployed Trident SLBM warhead. If the SALT II FROD antennae were not added to each silo, then the cost could be considerably less than $42.5 million and considerably less than $250,000 per additional deployed warhead. We can not ignore such cost-effective options in these times of fiscal deficit and defense austerity. Indeed, we would be derelict in our duties if we did not propose this option. This relatively low cost is achievable only because the missiles and the silos are already procured and already exist.

Third, this very cheap retrofit would add 150 U.S. ICBM warheads, increasing United States hard target kill capability by about 10 percent, and U.S. ICBM warhead survivability by about 15 percent.

Fourth, this retrofit would free up at least 50 Minuteman II missiles, enabling the resumption of vitally needed Minuteman II reliability test launchings suspended since 1984 due to a severe shortage of Minuteman II missiles.

Fifth, adding at least 150 U.S. ICBM warheads would be only a modest, but necessary, response to the Soviet addition of over 4,000 warheads to their intercontinental arsenal since SALT II was signed in 1979.

The Soviets already have 6,500 to 8,000 ICBM warheads, compared to only 2,198 for the United States—almost a 4-to-1 Soviet numerical advantage. Considering the confirmed Soviet accuracy and yield superiorities as well, we even now already face a 6-to-1 Soviet advantage in ICBM counterforce capability. This is an overwhelming Soviet first strike capability, as President Reagan admitted in his June 3, 1986 report to Congress. Soviet refire and reserve ICBM's could give the Soviets as much as a 10-to-1 superiority in ICBM capability, which is the most important measure of military power in the world today.

Sixth, Minuteman III retrofit would be an ideal "proportionate response" to the Soviet deployment of over 100 road mobile SS-25 ICBM's and reported 30 railmobile MIRV'd SS-24 ICBM's, both in clear violation of SALT II. The Senate has already overwhelmingly approved "proportionate responses" to Soviet SALT violations.

Seventh, the Air Force's Strategic Air Command stated as long ago as 1980, well before any Soviet SALT violations had ever been confirmed, that:

> Additional Minuteman III's would help to compensate for Soviet force modernization in the near term.

Moreover, this assessment was made well before the Soviets added over 4,000 warheads during their massive strategic build-up in the period of SALT II, and it is certainly even more true today.

Mr. President, I rest my case. This Minuteman III retrofit proposal is destined to become an important issue in both the 1988 Presidential and congressional campaigns, because now that the Soviets have killed SALT II by their "break out," the only reason for voting against such a cost-effective option to bolster deterrence is to appease Russia.

It is as simple as that, and, to be blunt, my amendment is easy for the American voter to understand. Between now and November 1988, we will be working to fulfill a duty to the public to ensure that Members of Congress have ample opportunity to show their colors on the question of appeasement and unilateral disarmament.

If the U.S. Senate will not vote to continue a previously requested, authorized, and appropriated U.S. strategic deployment program that is extremely cost effective and militarily effective, but that was delayed only because of U.S. unilateral compliance with the unratified, expired, and Soviet-violated SALT II Treaty, then unilateral disarmament and appeasement has truly become the rule in the U.S. Senate.

I do not believe that the American people want the U.S. Senate to embrace U.S. unilateral disarmament or appeasement of the Soviet Union, especially in the face of the expanding pattern of 38 to 50 presidentially confirmed Soviet "break out" violations of SALT I, SALT II, and the ABM Treaty.

Mr. President, this vote is an important signal of our will or lack of will to defend our country. It is crucial that the Senate vote to support this extremely cost effective deployment which will bolster the U.S. strategic deterrent posture.

Mr. President, I ask unanimous consent that a summary of the 24 confirmed Soviet SALT II violations to which are referred in my remarks be printed in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

PRESIDENTIALLY CONFIRMED EXPANDING PATTERN OF SOVIET SALT II BREAK OUT VIOLATIONS—TOTAL OF 24

I. SS-25 road mobile ICBM—prohibited second new type ICBM:

1. Development since 1975;

2. Flight-testing (irreversible) since February, 1983;

3. Deployment (irreversible) since October, 1985—over 100 mobile launchers—"direct violation";

4. Prohibited rapid-refire capability—doubles or triples or quadruples force;

5. Reentry Vehicle-to-Throw-Weight ratio over 1 to 2 (and doubling of throw-weight over the old SS-13 ICBM)—probable covert SS-25 two or three MIRV capability—"direct violation";

6. Encryption of telemetry, "direct violation".

II. Excess Strategic Nuclear Delivery Vehicles (SNDVs):

7. Strategy Nuclear Delivery Vehicle de facto limit of 2,504—Soviets have long been at least 75 to over 600 SNDVs over the 2,504 SNDV number only they had SALT II was signed in 1979, thus illustrating the clear fact that SALT II was fundamentally unequal.

III. Prohibited SS-N-23 Heavy SLBM:

8. Heavy throw-weight prohibited—conclusive evidence (irreversible);

9. Development since 1975;

10. Flight-testing (irreversible);

11. Deployment on Delta IV and probably on Delta III Class submarines (irreversible);

12. Encryption of telemetry.

IV. Excess Backfire Intercontinental Bombers:

13. Arctic basing, increasing intercontinental operating cabability;

14. Probable refueling probes, also increasing intercontinental operating capability;

15. Production of more than 30 Backfire bombers per year for an estimated period of over five years, making more than an estimated 12 extra Backfire bombers;

V. Camouflage, Concealment, and Deception:

16. Expanding pattern of camouflage, concealment, and deception (Maskirovka), deliberately impeding U.S. verification.

VI. Encryption:

17. Reported almost total encryption of ICBM, IRBM, SRBM, SLBM, GLCM, ALCM, and SLCM telemetry.

VII. Concealment of Launcher—(ICBM) Missile Relationship:

18. Reported probable concealment of relationship between SS-24 missile and its mobile ICBM launchers, and concealment of the relationship between the SS-25 missile and its mobile ICBM launchers.

VIII. Prohibited SS-16 Mobile ICBM:

19. Confirmed concealed deployment of 50 to 200 banned SS-16 mobile ICBM launchers at Plesetsk test and training range, now reportedly probably being replaced by a similar number of banned SS-25 mobile ICBM launchers.

IX. Falsification of SALT II DATA Exchange:

20. Operationally deployed, concealed SS-16 launchers not declared;

21. AS-3 Kangaroo long-range-air-launched cruise missile range falsely declared to be less than 600 kilometers, and not counted.

X. Excess MIRV Fractionation:

22. SS-18 super heavy ICBM—NIE reportedly states that SS-18 is deployed with 14 warheads each instead of the allowed 10, adding over 1,230 warheads.

XI. Exceeding SALT II MIRV Missile Sublimits:

23. and

24. The Reagan Administration confirmed on August 7, 1987, that:

"The Soviets exceeded the SALT II sublimit of 1,200 permitted MIRVed ICBMs and MIRVed SLBMs when the 5th Typhoon submarine recently began sea trials. Moreover, some SS-X-24 MIRVed ICBM railmobile launchers should now be accountable under the SALT II sublimit on MIRVed ICBMs. It appears that the Soviets have not yet compensated for any of the SALT II-accountable SS-X-24 launchers. Therefore, the Soviets may also have exceeded the SALT II sublimit of 820 MIRVed ICBM launchers." This judgment has been further confirmed as accurate.

The Soviets reportedly informed U.S. arms control negotiators in Geneva in late 1983 that they intended to exceed the SALT II sublimits of 820, 1200, and 1320, which they are now in fact doing. And Soviet leader Gorbachev confirmed to President Reagan at the Iceland Summit on October 11, 1986, that the SS-24 was deployed.

Moreover, the Soviets are reportedly flight-testing the even heavier throw-weight follow-on to the super heavy SS-18 ICBM, in violation of the SALT II absolute ceiling on SS-18 throw-weight. This SS-X-26 follow-on to the SS-18 will certainly result in further excess MIRVing on the SS-18, because it will probably carry 20 warheads.

Mr. HELMS. Mr. President, that is about it. I think Senators understand the issue. It is a very small cost, and as a matter of fact, it amounts to saving money by not investing in something else but using what we already have. Unless Senators have questions or problems with the amendment that they want to discuss, I will reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Illinois.

Mr. DIXON. Mr. President, the managers oppose the amendment of the distinguished Senator from North Carolina. I think the amendment, may I say, is well intentioned. One would have to observe, as a member of the Armed Services Committee, that, quite obviously, you cannot have too many things in your arsenal, if you had everything that one would like to have.

Mr. President, I would like to make serveral points very briefly. I will not take a lot of time. There may be others on our side who want to come over here and make some remarks about this amendment.

The Senate should first know, Mr. President, that this amendment by my friend from North Carolina was rejected by the Senate on an earlier occasion this year, 4 months ago. The Senator proposed this as an amendment to the fiscal year 1987 supplemental appropriations bill. I have the rollcall of that vote and will make it available. The amendment was defeated 57 to 32 on the supplemental appropriations bill 4 months ago.

Mr. President, that amendment and the rollcall can be found in the CONGESSIONAL RECORD dated May 28, 1987, at page 13914.

Mr. President, I notice my colleague has placed a letter from the Secretary of Defense on the easel behind him as part of the presentation of his remarks.

I would be tempted to say, Mr. President, that the letter by the Secretary of Defense is kind of artfully drawn, and you can about make out in the letter almost anything you want to make out of the letter. But I want to read what I call the bottom line of the letter. The Secretary writes Senator HELMS and thanks him and suggests that the idea has merit and it has appeal to put these 50 Minuteman III's in the Minuteman II silos but then it says this:

As you know, however, the Minuteman III's are far lesss counterforce capable than Peacekeeper.

Of course Peacekeeper is the MX.

Therefore, in view of the expanding Soviet threat, the full strategic modernization program remains our priority.

"Remains our priority." So what the Secretary of Defense is saying, I think in a very deft way—and as I say the letter is very artfully drawn—I think he is saying we would like to have everything but if we are going to have choices, if we are going to have to use our priority list, the strategic modernization program remains our priority.

The Senator in the chair knows that the worst thing we had to face in the Armed Services Committee was our commitments to priorities. I do not happen to be on the Strategic Subcommittee, so I would take a backseat to many on the committee, may I say, in my understanding of the various nuances involved in the subject matter at risk in this amendment, but I can say that my subcommittee that I chair had the heaviest bogey and made the deepest cuts and that is the point I want to get to next.

Where does this money come from that the Senator wants to use? I want to read from the amendment.

Of the funds appropriated for operations and maintenance to the Air Force—"For operations and maintenance to the Air Force," take the money out of there, and I am here to say that we have stripped operation and maintenance to the bone. I am very disappointed; if there is one thing about this bill that disturbs this Senator, it is the fact that we have not done everything I would like to see us do in connection with readiness, sustainability, and support in connection with depot maintenance, real property maintenance, ammunition, and spare parts. I sure do not want to take away from the flying time of our Air Force people. So while the amount here might not be a real large amount in the context of the debate over this whole authorization bill, whatever we take from operations and maintenance from the Air Force I want to say to my colleagues they can ill afford to give up.

I guess in conclusion, let me say—and again I say it with every due regard for my friend from North Carolina, who is honorably motivated, feels about this very deeply and I know those Minuteman III's could be helpful—what we tried to do in prioritizing what the Secretary asked us to do, to expand our full strategic modernization program and to make that our priority. And so we did things with Midgetman.

There may be debate on the floor, but we are spending some money on the question of the basing mode for the Peacekeeper, the MX, on rails, and I support that, Mr. President. There is some contentiousness about it, but I support it.

But those are all things we are doing in this area. So with every consideration to my friend from North Carolina, I must reluctantly suggest that in view of the priorities involved here and for the following reasons, we oppose this amendment:

First, this question has been visited before and the amendment was defeated earlier 57 to 32.

Second, in the listing of priorities we think the Midgetman and the rail-basing mode for MX and other things has a higher priority.

Third, in the use of our funds for the Air Force we think operation and maintenance has already been substantially reduced and should not be reduced further.

With due respect to my colleague, for all those good reasons, notwithstanding the good intentions of my colleague from North Carolina, I would have to reluctantly suggest that we do oppose this amendment.

While I have no desire to cut off debate, at the appropriate time I am instructed by this side to offer a motion to table the amendment of the distinguished Senator from North Carolina.

I yield the floor.

The PRESIDING OFFICER (Mr. Wirth). Is there further discussion on the amendment? The Senator from North Carolina.

Mr. HELMS. Mr. President, I am reminded of the poem we were required to memorize when I was in high school about the six blind men of Indostan who decided to describe an elephant. In the interest of the time of the Senate, I will only discuss three. One touched the side of the elephant and said, "Oh, an elephant looks like a wall." Another touched the tusk, "Oh, no," he said, "the elephant looks like a spear." Another one touched the trunk and said, "Oh, no, it looks like a snake."

Now, I must say my friend from Illinois alluded very carefully to the fact

that this amendment was not accepted earlier this year, but I would remind him that great oratory was presented by two distinguished Senators flatly saying that the Air Force and the Secretary of Defense did not support the amendment.

Now, I do not question the good faith of the Senators who said those things, but nevertheless they were not true. But the damage had been done. The vote was taken, and the amendment was defeated. Like a good soldier, when I am defeated, I am defeated. But the Senator, like one of the blind men of Indostan—and I am perhaps the second—reads the letter like he wants to read it and I read it as I want to read it, plus having discussions with the Secretary of Defense. I do not know whether the Senator has talked to the Secretary of Defense about this, but I have. And I believe I understand his letter.

The Secretary of Defense says in the third paragraph:

> The 150 additional Minuteman III warheads would undeniably be more capable against hardened targets than the 50 Minuteman II warheads they displace, and, thus, would constitute a valuable adjunct to the strategic modernization program.

Furthermore, Mr. President, the Senator is waving toward a cobweb when he talks about the cost of this, because there is no cost. The O&M money is there, and the proposal involves—now get this—one-tenth of 1 percent of the O&M funds, and you are buying an awful lot of defense for that small amount of money which has already been proposed to be authorized and appropriated.

Now, if I wanted to taunt my friend from Illinois about more defense, I would ask him how much more he would be willing to spend, how many hundreds of millions of dollars more for Peacekeeper, and so forth. But here we have some inexpensive but significant increase in the defense capability of this country. And all of a sudden all those Senators—or many of them—who talk so much about the cost of defense are probably the same ones who will oppose this no cost proposal. It shows us where the cards really lie.

I say again that the Secretary of Defense and the Air Force have both endorsed this amendment because they see the value of it.

So, Mr. President, at any time the distinguished Senator wishes to make his motion to table, I will yield back the remainder of my time.

I do not yield the remainder of my time. I yield to the distinguished Senator from Indiana such time as he may require.

Mr. QUAYLE. I thank the Senator.

Mr. President, the Helms amendment will give us a better counterforce capability than what we presently have. There is no doubt about it that the counterforce capability will come about because of the increased accuracy. You add the increased weapon even with lower yields.

The Senator from Illinois is absolutely correct. You need to have the Minuteman II. What you need the Minuteman II for is some operation tests. Believe me, I would rather have the operational tests on some of those than I would on others. We are going to have operation tests. We really do not need to have our missile capability basically be city busters. That is what we are getting rid of. The Minuteman III's are far more accurate.

Furthermore, from a monetary point of view you are getting 100 additional warheads for less than $50 million, and I know the Senate knows this. But we, by signing up to the 50 MX missiles, spent about $20 billion for 500 warheads. I think that is a prudent investment for peace and deterrence. It is needed for the modernization of our land-based ICBM. And it is something that is necessary. But I think if you look from a monetary point of view, this amendment is certainly the one that gives us some counterforce capability at a very, very low cost.

So I hope that the amendment—no doubt about where the Secretary of Defense stands this time around—will be adopted.

Mr. HELMS. Mr. President, I thank the Senator very much for his comments, and needless to say I agree with him.

I reserve the balance of my time.

Mr. DIXON. Mr. President, I presume I have time for a brief remark or two.

The PRESIDING OFFICER. The Senator has 21 minutes remaining.

Mr. DIXON. I want to read two paragraphs from the letter of the Secretary of the Air Force, and then move to table subject to any closing remarks the Senator from North Carolina might have.

Mr. President, this letter from Secretary of the Air Force Aldridge is several pages in length. I am just going to read two sentences:

> Although more capable against hardened targets than the Minuteman II warheads they replace, these warheads would have limited utility against the most threatening class of Soviet targets. Only weapons with the capability of the Peacekeeper and the Small ICBM can achieve this goal. Therefore, while Minuteman III retrofit is eco-nomical, a comparison of its cost effectiveness with that of Peacekeeper is not appropriate. At the present reduced budget levels—

And that is what I want to stress, the present reduced budget levels—

> we continue to adhere to the President's Strategic Modernization Program as the best investment for the defense dollar.

That is what we have done, Mr. President. On the next page I quote from Secretary Aldridge:

> While we support improving Minuteman force capabilities, we must guard carefully against the impression that Minuteman III retrofit could, in any way, be a substitute for continued ICBM Modernization. However, assuming continued support for the Strategic Modernization Program, and increased funding for this initiative, the Air Force would support redeploying Minuteman IIIs.

Of course, we do not have those kinds of funds in this limited authorization bill this year and for that reason, Mr. President, unless there are others on this side that desire to be heard, I ask unanimous consent that this letter from the Secretary of the Air Force be inserted in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE AIR FORCE,
Washington, DC.

Hon. JESSE A. HELMS,
U.S. Senate,
Washington, DC.

DEAR SENATOR HELMS: I am responding to your letter of June 24, 1987 dealing with the retrofit of Minuteman III missiles into Minuteman II silos. The Air Force previously supported a Minuteman III retrofit. However, budget cuts and the need to concentrate on support for the Strategic Modernization Program led us to drop advocacy after the opportunity for this option passed in the FY83 budget process. However, we have taken actions to protect sufficient numbers of assets to redeploy 50 Minuteman IIIs should future circumstances warrant.

As introduced on the floor of the Senate on May 28, your amendment proposed retrofit of 100 Minuteman IIIs. It was the number 100 and the potential impact to ICBM Modernization which caused my department's greatest concerns. Had our staffs worked together in advance of the introduction of this amendment, I am confident that this and other aspects of a redeployment proposal could have been explained and worked to mutual satisfaction.

When we discuss the advantages of retrofit, we need to qualify those advantages so there are no misconceptions. Certainly trading 50 Minuteman II warheads for 150 Minuteman III warheads is a plus. Asset limitations, however, dictate that these Minuteman III warheads would have to be the lower yield MK12s. Although more capable against hardened targets than the Minuteman II warheads they replace, these warheads would have limited utility against the most threatening class of Soviet targets. Only weapons with the capability of the Peacekeeper and the Small ICBM can achieve this goal. Therefore, while Minuteman III retrofit is economical, a comparison of its cost effectiveness with that of Peacekeeper is not appropriate. At the present reduced budget levels, we continue to adhere to the President's Strategic Modernization Program as the best investment for the defense dollar.

A clear benefit of Minuteman III retrofit is support for the Minuteman II flight test program. Those missiles displaced by a retrofit would become available to replenish the lean Minuteman II test inventory. This revitalized flight test program would provide increased confidence in the reliability and capability of Minuteman II, which is planned to remain a significant contributor to our ICBM deterrent force into the 21st

century. Regarding the Minuteman III flight test program, extracting 50 missiles from this test program would be acceptable. But, the loss of 100 missiles as originally suggested would decimate the test program that supports the continued effectiveness of that force.

We have made progress toward our ICBM Modernization goals in the last few years. We owe it to the people of this country to continue that progress in order to achieve a safer strategic balance. While we support improving Minuteman force capabilities, we must guard carefully against the impression that Minuteman III retrofit could, in any way, be a substitute for continued ICBM Modernization. However, assuming continued support for the Strategic Modernization Program, and increased funding for this initiative, the Air Force would support redeploying Minuteman IIIs.

I think it's important that our staffs work together in advance of issues such as this. Major General Al Logan, the Air Force Director of Plans and Brigadier General Walt Webb, the Air Force Director of Operations are available, as needed, for indepth discussions on force structure and operational implications of a Minuteman III retrofit. Closer cooperation will be mutually beneficial in our common pursuit of the best possible defense for America.

Sincerely,

E.C. ALDRIDGE, JR.,
Secretary of the Air Force.

Mr. DIXON. I move to table, unless my colleague has any further comment.

Mr. HELMS. This Senator cannot do it. My time has been yielded back.

Mr. DIXON. I yield back the balance of my time. I move to table.

Mr. HELMS. If no one wants to speak, I think it is a good idea to yield back the time. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Illinois to lay on the table the amendment of the Senator from North Carolina. On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD. I announce that the Senator from Oklakoma [Mr. BOREN], the Senator from California [Mr. CRANSTON], the Senator from Nebraska [Mr. EXON], the Senator from Georgia [Mr. FOWLER], the Senator from Michigan [Mr. LEVIN], the Senator from Ohio [Mr. METZENBAUM], the Senator from Maryland [Ms. MIKULSKI], the Senator from Michigan [Mr. RIEGLE], the Senator from Illinois [Mr. SIMON], are necessarily absent.

I further announce that the Senator from North Carolina [Mr. SANFORD], the Senator from Connecticut [Mr. DODD are absent on official business.

I further announce that, if present and voting, the Senator from Michigan [Mr. LEVIN] and the Senator from Maryland [Ms. MIKULSKI], would each vote "yea."

On this vote, the Senator from North Carolina [Mr. SANFORD] is paired with the Senator from Arizona [Mr. MCCAIN].

If present and voting, the Senator from North Carolina would vote "yea" and the Senator from Arizona would vote "nay."

Mr. SIMPSON. I announce that the the Senator from Texas [Mr. GRAMM], the Senator from Kansas [Mrs. KASSEBAUM] and the Senator from Delaware [Mr. ROTH], are necessarily absent.

I also announce that the Senator from Arizona [Mr. MCCAIN] and the Senator from Vermont [Mr. STAFFORD], are absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 51, nays 33, as follows:

[Rollcall Vote No. 257 Leg.]

YEAS—51

Adams	Dixon	Matsunaga
Baucus	Durenberger	Melcher
Bentsen	Evans	Mitchell
Biden	Ford	Moynihan
Bingaman	Glenn	Nunn
Bradley	Gore	Packwood
Breaux	Graham	Pell
Bumpers	Harkin	Proxmire
Burdick	Hatfield	Pryor
Byrd	Heinz	Reid
Chafee	Inouye	Rockefeller
Chiles	Johnston	Sarbanes
Cohen	Kennedy	Sasser
Conrad	Kerry	Specter
Danforth	Lautenberg	Stennis
Daschle	Leahy	Weicker
DeConcini	Lugar	Wirth

NAYS—33

Armstrong	Heflin	Quayle
Bond	Helms	Rudman
Boschwitz	Hollings	Shelby
Cochran	Humphrey	Simpson
D'Amato	Karnes	Stevens
Dole	Kasten	Symms
Domenici	McClure	Thurmond
Garn	McConnell	Trible
Grassley	Murkowski	Wallop
Hatch	Nickles	Warner
Hecht	Pressler	Wilson

NOT VOTING—16

Boren	Kassebaum	Roth
Cranston	Levin	Sanford
Dodd	McCain	Simon
Exon	Metzenbaum	Stafford
Fowler	Mikulski	
Gramm	Riegle	

So the motion to lay on the table amendment No. 708 was agreed to.

Mr. DIXON. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DIXON. Mr. President, I would like to ask the distinguished Senator from Connecticut, first, whether he is prepared to proceed with his amendment and, second, in view of the majority leader's desire to dispose of the business as expeditiously as possible this evening whether he would be amenable to a time constraint with respect to consideration of his amendment.

Mr. WEICKER. Mr. President, in response to the distinguished Senator from Illinois, I am willing to have a 30-minute time agreement equally divided between the two sides. I seek no additional time.

Mr. BYRD. Mr. President, would both Senators be willing to agree that no amendments to amend be in order?

Mr. WEICKER. I am willing to agree to that.

The PRESIDING OFFICER. Is there objection?

Mr. DIXON. I have no objection to that, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WEICKER. Mr. President, I have an amendment I send to the desk.

Mr. DIXON. Mr. President, I wonder, before the Senator from Connecticut proceeds, if the majority leader could address the whole question of a time agreement with respect to the business beginning next week and the expectations for the remainder of tonight, and so forth. Would that be agreeable?

Mr. WEICKER. Anything that the distinguished majority leader does is agreeable, although I would say that knowing the way these things go that could take up more time than my amendment.

Mr. BYRD. Mr. President, if we could have Senator NUNN and Senator WARNER here before I proceed, because much will hinge on the getting of these agreements on these amendments as to whether the Senate will be in later this evening or tomorrow.

The PRESIDING OFFICER. The majority leader will suspend. The Senate will be in order. The Senate will be in order.

The majority leader is recognized.

Mr. BYRD. Mr. President, I would like to get the reaction of the manager at this point before I proceed.

Mr. NUNN. Will the Senator yield?

Mr. BYRD. I yield.

Mr. NUNN. Mr. President, if I could have the attention of Senators, both here and listening in. We have a chance now of getting out of here tonight within about an hour and not coming in tomorrow. That is the good news.

The real question is whether we can get this unanimous consent agreement which the majority leader will propound in a few minutes.

We have worked on both sides of the aisle very diligently all day long to try to get people lined up on this. The Senator from Indiana has worked very hard on it. Senator WARNER of Virginia, has done a tremendous job in working to get this. The minority leader has been very cooperative, and the majority leader has been.

What we have now is a series of unanimous-consent requests to propound. It does not cover every amendment on this list, but it covers a number of major amendments and assures us, with good will on both sides, that we at least have a chance of finishing this bill next week. So if we can get this unanimous-consent agreement entered into, we will have a very full day Tuesday. We would not have to come in tomorrow. We would come in when the majority leader says on Tuesday; the earlier the better, from my point of view. We would have to have a late night Tuesday night and a very full day Wednesday and Thursday to be able to complete this bill.

I think it is possible, I say to the majority leader, to complete it and not have to be in next Saturday a week from tomorrow. But that means there is much work to be done. And all Senators should know that if this is not completed by then, it would be my recommendation, at least, that we stay in next Saturday and complete this bill. We simply must move this bill out.

I say to the majority leader that I hope our colleagues will see fit to agree to this. We can handle the Weicker amendment tonight and then go home until Tuesday.

The PRESIDING OFFICER. The Chair recognizes the majority leader.

If the majority leader might suspend, the Senate will be in order. The Senate will be in order.

The majority leader is recognized.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD. Mr. President, I ask unanimous consent that, with respect to each of the following amendments, the time requested and the time agreed to, if agreed to, would be on the condition that there be no amendment to the amendment in order, because otherwise an amendment to the amendment would have to be taken up, no debate would be allowed on it and, bang, there is a vote.

So, Mr. President, I ask unanimous consent that time on the Kerry ASAT amendment be limited to 2 hours, to be equally divided in accordance with the usual form, with the understanding that in respect to that amendment there will be a tabling motion and if that tabling motion were to fail, then the time agreement falls.

On the Johnston SDI funding amendment, 3 hours, equally divided. Now I should say, "On or in relation to the amendment." That leaves a tabling motion in order and it also allows an up or down vote if Senators are agreeable to that.

On all the remaining amendments, the time agreement would stand regardless of whether or not the amendment were tabled.

On the Lautenberg religious headgear amendment, 1½ hours, to be equally divided in accordance with the usual form. In all cases, they are divided and controlled in accordance with the usual form. The vote would be on or in relation to the Lautenberg amendment.

On the Kennedy-Hatfield nuclear testing amendment, 2 hours, equally divided, usual form, on or in relation to.

Mr. QUAYLE. I think that is also one that we said if the tabling motion failed the time agreement did not apply on that one.

Mr. NUNN. We did not say that on that one.

Mr. BYRD. Mr. President, on the Kennedy-Hatfield nuclear testing amendment, 2 hours, equally divided, usual form, but if the motion to table fails, there will be no time limit. In other words, the agreement would fall.

On the Hatfield chemical amendment, 1 hour, equally divided and controlled in accordance with the usual form, and the agreement is with respect to a vote on or in relation to the Hatfield chemical amendment.

And exactly the same with respect to a Pryor chemical amendment.

Those are the requests, with the understanding that no amendments to the amendment be in order in every case.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. BYRD. On the Johnston SDI amendment, the request is 4 hours instead of 3.

The PRESIDING OFFICER. Is there objection? The Chair hears none. It is so ordered.

Mr. BYRD. Mr. President, on the amendment by Mr. PRYOR for which I had asked for 1 hour equally divided, I would change that to 1½ hours, equally divided.

The PRESIDING OFFICER. Is there objection? The Chair hears none. It is so ordered.

Mr. BYRD. Mr. President, I do not want to impose on the distinguished Senator from Connecticut any longer. He has been most gracious and courteous. I ask unanimous consent now that the agreements have been reached, now that we have an amendment pending and that would be the last rollcall vote today, a good day's work has been done by these two men and by the Senate.

(The following proceedings occurred later in the day:)

Mr. BYRD. Mr. President, I am not sure that the intent of the Senate was clear when the agreements were entered with respect to the amendments a little earlier today. In some of those situations, the amendments may be amendments to strike, and obviously no amendment to such an amendment would be in order, but an amendment to the language to be stricken would ordinarily be in order.

So, in view of the fact that it was the spirit and the intent of the request and the order, I am sure, that Senators were agreeing to and entering into, I ask unanimous consent that if any amendments are amendments to strike, then amendments to the language proposed to be stricken are also precluded.

Mr. QUAYLE. The majority leader is correct that was the desire. We have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the agreement follows:

Ordered, That during consideration of S. 1174, the amendments listed below be in order under the following time limitations; the time to be equally divided and controlled in the usual form; that a vote occur on or in relation to each amendment upon the expiration or yielding back of the time; that no second degree amendments or amendments to the text proposed to be stricken be in order:

Kerry ASAT—2 hours; provided that if a tabling motion fails, the time limitation falls.

Johnston SDI Funding—4 hours.

Lautenberg Religious Headgear—1 hour, 30 minutes.

Kennedy-Hatfield Nuclear Testing—2 hours; provided that if a tabling motion fails, the time limitation falls.

Hatfield Chemical—1 hour.

Pryor Chemical—1 hour, 30 minutes.

ORDERS FOR TUESDAY

ADJOURNMENT TO 8 A.M.

Mr. BYRD. I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 8 o'clock on Tuesday morning.

The PRESIDING OFFICER. Is there objection? The Chair hears none. It is so ordered.

MOTION TO INSTRUCT THE SERGEANT AT ARMS AT 8:30 A.M. TUESDAY

Mr. BYRD. Mr. President, the motion to instruct the Sergeant at Arms will be made at no later than 8:30 and the vote I would expect to be completed and we would be ready to call for the regular order at 9 o'clock.

Now, if we can substitute an amendment—I believe the managers, though, prefer not to have a vote on the amendment first thing.

Mr. NUNN. We would hope that we would get the Johnston SDI amendment up. That is a big one. It has a long time on it and we would hope we would get that up on Tuesday morning.

If we get that up on Tuesday morning and get that one done before noon Tuesday, we will have made a giant stride.

I do not know that the majority leader wants a vote early, before that, or not, but we need to get that one up.

I believe the Senator from Louisiana has agreed to be here and get that amendment up.

Mr. BYRD. Let us have the understanding that the rollcall vote on in-

structing the Sergeant at Arms will begin at 8:30, and we will allow a half hour, maximum of a half hour, on that vote. That will be over at 9 o'clock. We will begin debate at 9 o'clock. I thank all Senators.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business not to extend beyond 8:30 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNFINISHED BUSINESS

Mr. BYRD. At no later than 8:30 a.m., I ask unanimous consent that the unfinished business be laid before the Senate at the conclusion of morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1988 AND 1989

AMENDMENT NO. 709

(Purpose: To require consistency in the budget presentations of the Department of Defense)

Mr. WEICKER. Mr. President, I send an amendment to the desk and ask it be reported.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Connecticut [Mr. WEICKER] proposes an amendment numbered 709.

Mr. WEICKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment is as follows:

On page 114, between lines 13 and 14, insert the following:

SEC. 812. REQUIREMENT FOR CONSISTENCY IN THE BUDGET PRESENTATIONS OF THE DEPARTMENT OF DEFENSE

(a) IN GENERAL.—Section 114 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(f) The amounts of the estimated expenditures and proposed appropriations necessary to support programs, projects, and activities of the Department of Defense included pursuant to paragraph (5) of section 1105(a) of title 31 in the budget submitted to Congress by the President under such section for any fiscal year or years and the amounts specified in all program and budget information submitted to Congress by the Department of Defense in support of such estimates and proposed appropriations shall be mutually consistent unless, in the case of each inconsistency, there is included detailed reasons for the inconsistency.

"(g) The Secretary of Defense shall submit to Congress each year, at the same time as the President submits the budget to Congress under section 1105(a) of title 31 for any fiscal year or years, the five-year defense Program (including associated annexes) used by the Secretary in formulating the estimated expenditures and proposed appropriations included in such budget for the support programs, projects, and activities of the Department of Defense.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply with respect to budgets submitted to Congress by the President under section 1105(a) of title 31, United States Code, for fiscal years after fiscal year 1988.

Mr. WEICKER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. WEICKER. Mr. President, I rise to offer an amendment on the 5-year program/budget mismatch—an issue on which the distinguished chairman of the Armed Services Committee, Senator NUNN, has spoken many times.

The chairman of the Armed Services Committee refers to the 5-year program/budget mismatch as the "bow wave" problem.

The "bow wave" is a matter of having too many programs and not enough money—as unbelievable as that may seem when Congress is pumping about $300 billion a year into the defense budget. There is insufficient money available in the outyears to sustain the programs proposed in the budget. Senator NUNN sees this as "one of the worst problems we have in the defense budget now." It has far reaching implications. And he says it is going to get worse. He suggests that it makes the coffeepot scandal look like a dime store operation. I agree completely.

What I want to do is discuss the problem as it manifests itself during the budget review process in Congress.

The Department of Defense is giving Congress inconsistent 5-year program and budget information.

The problem has two facets.

First, there are two 5-year defense plans for fiscal years 1988-92.

The 5-year plan submitted to Congress in compliance with the Congressional Budget Act of 1974, which appears in the Budget of the United States Government and is basis for deficit projections, totals $1.72 trillion.

The numbers in the congressional plan have been pulled out of thin air. They are not based on "hard" military requirements. They have not been translated into a detailed line item program plan.

The secret, Pentagon Five Year Defense Program, known as the FYDP, by comparison, which is never given to Congress, totals $1.8 trillion or about $77 billion more than the plan given to Congress. The numbers in the budget years, fiscal year 1988-89, are identical in both plans. The divergence occurs in the outyears roughly as follows: $25 billion for 1990; $25 billion for 1991; and $27 billion for 1992.

The discrepancies between the two 5-year plans were verified by the deputy inspector general of the Defense Department in a letter to me dated April 30, 1987.

I ask unanimous consent that that letter be placed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

INSPECTOR GENERAL,
DEPARTMENT OF DEFENSE,
Arlington, VA, April 30, 1987.

Hon. LOWELL P. WEICKER, Jr.,
U.S. Senate,
Washington, DC.

DEAR SENATOR: This responds to your letter of April 10, 1987, concerning the differences between the President's estimates for budget authority for a 5-year defense program as reported to Congress (the "top line") and the amounts in the internal Defense Department document known as the FYDP—Five Year Defense Program. You asked me to verify the information, and you also asked five specific questions. The first answer addresses the validity of the information.

Your data indicate that the FYDP for fiscal years 1988-1992 will project a need for $1,804.8 billion or $82.9 billion more than the President's top line budget authority estimate. To compare properly the FYDP to the top line, we should first reduce the FYDP figure by offsetting receipts to reflect needed budget authority. With that relatively minor adjustment, the difference between the President's budget and the FYDP will be $77.2 billion for FY 1988-1992. The difference for FY 1987-1991 is $58.8 billion. There was no difference between the top line and the FYDP for the FY 1986 and 1985 budget submissions.

The second question was, "why do they exist?" The difference exists only in the outyears of Defense planning. There is no difference between the top line and the FYDPs for the budget year(s) under review. I know that the Secretary of Defense answered this question in a letter to you dated March 4, 1987. Let me try to put his rationale in my own words because I believe there is a valid reason for these differences.

The President's budget is the Defense budget. It includes the request for budget authority for the budget year(s) under review, as well as the long-term view of Defense budget commitments that the President is asking the Congress to support, taking into account national macro-economics considerations. On the other hand, the FYDP is an internal DoD planning document that serves two purposes. It provides the detailed support for the budget year(s) under review, and it also contains the outyear planning details for the Defense programs generated in response to Defense and fiscal guidance. Although the outyears in the FYDP are prepared in response to the Secretary's fiscal guidance, such guidance is not fully constrained by macro-economic considerations such as the size of the deficit. Such constraints are addressed in the budget year(s) under review, as they should be.

You also wanted to know who is responsible for the differences? The Secretary of Defense is responsible for the FYDP. However the President, with advice from the

Secretaries of Defense and Treasury, as well as the Director of the Office of Management and Budget, is responsible for top line budget authority projections.

Has the Department of Defense broken any laws? No laws have been broken. The Congressional Budget and Impoundment Control Act amended the Budget and Accounting Act of 1921 to require that the President's budget contain estimated expenditures, receipts and proposed appropriations for each of the four fiscal years following the budget year. The level of supporting detail is left to the President's discretion. For the budget year(s) under review, the President provides a great deal of information which admittedly coincides with the Defense Department's FYDP. However, for the outyears, the President provides only summary information because no decisions are being made on the detail which supports the budget authority for these years.

Your final question was, "is the Department planning to revise 1988-1992 so that it conforms with the one presented to Congress, and if so, when?" Since there is no difference between the FYDP as adjusted for offsetting receipts and the President's request for FY 1988 and 1989 budget authority, the Defense Department is not planning to revise its FYDP at this time. There is merit in not making program adjustments any earlier than necessary. Of course, DoD will have to revise its basic planning document to react to Congressional action on the FY 1988-89 budget request once that action is known. However, if the FYDP were summarily adjusted to the top line at this time, the effect would be to submerge valid program considerations and make them less visible for subsequent Office of the Secretary of Defense level review.

I hope this has helped you. Please call me if you need more information.

Sincerely,

DEREK J. VANDER SCHAAF,
Deputy Inspector General.

U.S. SENATE,
Washington, DC, April 10, 1987.

Mr. DEREK J. VANDER SCHAAF,
Deputy Inspector General, Department of Defense, Arlington, VA.

DEAR MR. VANDER SCHAAF: I am writing to you about the vast discrepanices between the cost of the President's five-year defense programs as reported to Congress and their cost as portrayed in the internal Defense Department document known as the FYDP—The Five Year Defense Program.

Documents and information in my possession indicate that the internal Defense Department five-year defense program for fiscal years 1988-1992 projects a need for $1,804.8 billion or $82.9 billion more than has been reported to Congress. Similarly, the total cost of last year's internal five-year defense program exceeded the amount reported to Congress by $62.9 billion.

Under the Congressional Budget and Impoundment Control Act of 1974 (Section 603), the President is required to submit five-year budget projections for the United States Government. If those projections are inaccurate, then the department responsible for providing the erroneous information is not abiding by the spirit of the law.

For that reason, I would like you to look into this matter to verify the accuracy of my information and to answer the following questions: (1) how large are the discrepancies; (2) why do they exist; (3) who is responsible for them; (4) have any laws been broken; and (5) is the department planning to revise the internal five-year program for fiscal years 1988-92 so that it conforms with the one presented to Congress, and if so, when?

As I want to be in a position to propose some remedial legislation to the Armed Services Committee when it begins marking up the authorization bill toward the end of this month, I would like to have the answers to my questions by April 24, 1987.

Sincerely,

LOWELL WEICKER, Jr.,
U.S. Senator.

Mr. NUNN. Will the Senator yield?

Mr. WEICKER. Yes.

Mr. NUNN. Mr. President, I have to leave the floor just for a few minutes. Before I do I want to speak for this amendment. I think the Senator has put his finger right on the biggest problem we have in the defense budgeting. This 5-year defense plan they have in the Department of Defense is completely out of sync with what we see. It is unrealistic, in terms of budget numbers. They are planning for a larger program in the Department of Defense for all their weapons systems than is going to be forthcoming under the very best budget assumptions and even under the highest tier, that we could envision in a 5-year defense plan.

That means that the planning is obscured. It means that weapons systems projected costs are going to be much higher per unit because you are not going to have the funding. Inevitably what has happened and will continue to happen with greater intensity is a spread-out of those costs with less units being produced on each assembly line and monumental inefficiencies in assembly lines.

This is a step toward addressing the biggest waste we have in the Department of Defense. I commend the Senator. I plan to vote for the amendment. I may not be back before the rollcall starts, so I wanted to speak for it.

Mr. WEICKER. I thank my distinguished colleague for his comments and believe me, to have those comments means everything to the substance of the matter before the Senate.

The FYDP is a very important document, because it details how much money is available and who gets it. It embodies the numbers in the Pentagon computers and is the result of perhaps 1 million man-hours of staff work each year. It is the sum total of literally thousands of individual spending decisions, such as the F-15 flying hour and spare parts programs, the purchase of aircraft carriers, and the production of the M-1 tank, that the Secretary of Defense must make each year.

Second, the line item data given to Congress in support of the budget request, as presented in congressional data sheets, Procurement Programs [P-1] documents and testimony, are derived from and consistent with the more costly internal FYDP.

This is a flimflam operation.

Approval of the line items as they appear in the budget and congressional data sheets would be in keeping with the higher FYDP top line, but the extra $77 billion needed to sustain those programs at economic rates has already been summarily carved from the outyears if one is to believe the 5-year plan submitted to Congress.

Mr. QUAYLE. Will the Senator yield?

Mr. WEICKER. I yield.

Mr. QUAYLE. Some people asked about a rollcall. I do not intend to push for a rollcall. Unless you want one—I might talk a little bit about it, but I have no desire to push for a rollcall.

The chairman accepts the amendment. It is going to pass.

Mr. WEICKER. That is fine. Do the majority and minority leaders agree on this? I asked for it, but I am perfectly willing to vitiate.

Mr. NUNN. I suggested the rollcall because I did not know we were going to have an agreement. If we are not going to have a disagreement, then in fairness to our colleagues we could let everyone know if the Senator vitiates the yeas and nays. They could head out and catch planes, and so forth.

Mr. QUAYLE. I do not disagree to the extent of asking for any kind of a rollcall vote.

Mr. NUNN. Mr. President, then I would suggest to the Senator from Connecticut if he sees fit perhaps to vitiate the yeas and nays.

Mr. WEICKER. I have no problem. Mr. President, I ask unanimous consent that the yeas and nays on my amendment be vitiated.

The PRESIDING OFFICER (Mr. REID). Without objection, that is the order.

The Senator from Connecticut.

Mr. WEICKER. The 5-year defense plan, Mr. President, is a very important document. The programs no longer fit into the 5-year budget. The programs and budget do not mesh. Approval of line items as requested in the budget would therefore lead to instability and waste as program funding must inevitably be reduced in the outyears.

Now, the argument will be made by those who oppose the amendment that DOD is never in a position to provide line-item detail until the appropriations process has been completed. Well if DOD cannot provide line-item detail at the beginning of the budget process—January-February—then how in the world is the budget formulated—the budget being the first year of the 5-year plan? Line items are what budgets are made of. If line-item detail does not exist in January, then the budget is built on sand.

Inconsistencies in the 5-year program and budget information given to Congress constitute documentary evidence of the bow-wave problem identified by Senator NUNN. The inconsistencies do not cause the bow wave. They are the effect—the result. And they help to energize and sustain it through the congressional budget review process.

It would be irresponsible to allow DOD to continue to submit inconsistent budgetary information.

Congress must stop taking a piecemeal approach to the defense budget. We need to look at the 5-year program and budget in its entirety.

We must gain a better understanding of the future consequences of today's decisions.

Budget decisions today entail spending commitments far into the future. For example, Congress is being asked to vote on funding for two aircraft carriers. This vote involves a commitment to spend operating and support dollars over the next 40 to 50 years. Is there enough money in the 5-year budget for the two carriers along with everything else? We do not have the information needed to answer the question.

Indeed, what limited information we have creates a very misleading impression.

There is little Congress can do and do well without the facts.

Congress needs accurate information to understand such commitments and to make rationale decisions. If program and budget informaiton is flawed, then Congress cannot do its job.

My amendment would require that all program information submitted to Congress after 1988 be consistent with the 5-year budget submitted in compliance with the Congressional Budget Act of 1974—a very simple and straightforward approach.

In other words, that there be one 5-year plan, not two; just one; one set of facts for all of us to evaluate as we vote on each of these items, line by line.

To ensure compliance, the Secretary of Defense would be required to submit the 5-year defense program used in formulating the budget.

My amendment would force DOD to submit coherent 5-year program and budget information and would end the practice of having two 5-year defense plans.

My amendment is not a final solution. I see it as a modest first step in what must be a long-term effort in Congress to take a broader view of budgetary problems. But as we all know, the problem will not be solved until those in positions of authority, both in Congress and the Department of Defense, have the courage to do what must be done—make the hard choices.

Mr. President, I ask unanimous consent that two articles on this matter be included in the RECORD: first, an article written by David Evans, which appeared in the Chicago Tribune of Sunday, July 26, 1987, entitled "Too Much Money Provides Pentagon Too Many Projects"; and the second, an article by Tim Carrington of the Wall Street Journal of August 21, 1987, under the title "Politics and Policy." I ask unanimous consent that these articles be printed in the CONGRESSIONAL RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Chicago Tribune, July 26, 1987]

TOO MUCH MONEY PROVIDES PENTAGON TOO MANY PROJECTS

(By David Evans)

WASHINGTON.—The nation's capital has been described as 10 square miles surrounded by reality. This aphorism is most true in the case of defense spending, where no matter how much money the Pentagon is given, there never seems to be enough.

Over the last six years more than $1.5 trillion has been pumped into the Department of Defense, yet readiness levels are flat, modernization rates are slower than during the Carter years, the Navy may not be able to sustain a 600-ship fleet, and the Air Force is cutting back to 37 from 40 tactical fighter wings.

The real problem is not a lack of money, but the Pentagon's unrealistic plans to spend it. Weapons proponents in the military services tend to underestimate the purchasing and operating costs of their pet projects. The Pentagon leadership also tells the services to plan on large budget increases as they put together their five-year plans.

Both aspects of Pentagon planning tacitly encourage the services to start more programs than they can afford. Cost overruns are the most visible evidence of what happens when these planning delusions hit the hard ground of fiscal reality.

Until recently, the Pentagon's optimistic plans at least matched the five-year spending proposals President Reagan submitted to Congress. Now it appears that Reagan's proposal to spend a staggering $1.7 trillion on defense over the next five years is not enough to contain the Pentagon's spending urges.

Critics cite as proof the discovery of an internal Pentagon plan to spend at least $77 billion more than Reagan has proposed. This gap exist, a Marine colonel with Pentagon experience says, because after six years of rising budgets the Pentagon's leaders "have lost the ability to say no" to $77 billion in additional programs the services want,

Defense Secretary Caspar Weinberger acknowledges there are some higher internal figures, but he asserts that they're "not in any sense a final determination."

But a congressional staffer observes: "By concealing the real five-year plan, [Pentagon planners] lock in enormous pressures for continued high spending. Once all these programs get started in 1988 and 1989, they're going to get identified by congressional district. They are going to be very hard to stop."

If the additional spending can be projected for a specific district, he suggests, the jobs and profits it could produce become an important political inducement for Congress to support the increase.

A Pentagon source puts the problem more bluntly, "It's an extortion game; our goal is to enslave Congress."

In the end, this ploy probably won't work. With too many programs chasing after too few dollars, the secretary of defense who follows Weinberger in 1989 will be faced with a huge jolt back to fiscal reality.

"It's like buying a big, new house in the expectation of a huge salary increase," says Mike Burns, a defense analyst with Business Executives for National Security. "They're not going to get those increases, and to afford the house they'll be selling off the rugs and furniture in 1989."

The result, he says, will be a "hollow force": weapons without the ammunition, spare parts, fuel or necessary training levels.

The higher spending figures are contained in a closely guarded internal Defense Department document called the Five Year Defense Plan. It represents the detailed spending plans for the five-year period beginning next year, through fiscal 1992, including tanks, "Star Wars" space weapons and spare parts.

This is a new development in Pentagon budget wars. Until last year, Weinberger's budget always met Reagan's instructions.

Sen. Lowell Weicker of Connecticut, senior Republican on the Senate Appropriations Committee, has led a lonely battle for full disclosure to Congress of the Pentagon's internal plan.

"All the defense programs that make up the fiscal 1988 budget assume that $77 billion will be available in future years. There is little Congress can do without all the facts, because we're starting programs where we really don't know what we're buying into," Weicker said.

The Pentagon planning process begins with a statement from the Joint Chiefs of Staff about the military forces needed to carry out national strategy. That estimate is contained in a secret memorandum to the defense secretary called the Joint Strategic Planning Document, and it always outlines a bigger and much more expensive military than the current one, soaking up about 10 percent of the gross national product, as opposed to the 6 percent currently devoted to defense.

The secretary of defense's task is to pull the military down to a spending plan the president is willing to present to Congress. The secretary has to link strategy to resources.

The president tells the secretary of defense how much money he can expect. The defense secretary, in turn, slices up that pie and tells the armed services how big a piece each of them can expect for the next five years.

On that basis, the services develop their proposed spending plans. Those plans are then scrutinized at the highest level inside the Pentagon to produce the defense part of the president's budget. Over a million manhours are frequently devoted to this effort.

The development of the fiscal 1988 defense budget, now before Congress, was far different. Initial planning for this budget began more than a year ago, before Congress had even passed the 1987 budget.

For their fiscal 1988–1992 five-year plans, Weinberger told the services to assume Congress would approve the $312 billion request for fiscal 1987, and that defense spending would rise to $340 billion in fiscal 1988 and

continue to rise at 3 percent over inflation thereafter.

The ink was hardly dry on those plans when Congress passed its concurrent resolution in late June, 1986, which capped defense at $285 billion in 1987.

"There was a huge emerging disconnect between our internal plans and the mood on Capitol Hill," recalls a Pentagon staffer.

The response was twofold, and counterproductive.

On July 22, 1986, Weinberger's deputy, William Taft, directed the services to cut $80 billion out of their five-year spending plans for 1988-1992. The services were given three weeks to make the reduction. It was a frantic exercise described by one of the participants as "taking a plan built with a micrometer and shaping it with an ax."

Curiously, the next day Taft convened the Defense Resources Board, composed of the service secretaries and senior Pentagon officials to review the original spending plans. These plans were based on the higher numbers already submitted by the services. Over the next three weeks the most senior budget-planning body in the Pentagon, which is headed by Taft, added $13 billion to the five-year plan Taft had ordered trimmed the day before.

The services dutifully submitted their $80 billion in proposed reductions on Aug. 11, 1986. Budget and program experts in the office of the secretary of defense were given less than 24 hours to review and approve the reductions, though they had spent the previous six weeks coming up with the rationale for adding $13 billion to the same five-year plan. The result was a net $67 billion reduction in spending plans, not nearly enough to meet the much lower spending levels suggested by Congress' June budget resolution.

Sen. Sam Nunn (D. Ga.), chairman of the Senate Armed Services Committee, got wind of the fiscal delusions in the Pentagon. Last August, in a speech on the Senate floor, he recalled the Gramm-Rudman-Hollings goal of a balanced budget by 1990, as well as the resolution two months earlier establishing "a zero-growth spending path" to achieve it.

"It is clear this cold, harsh reality hasn't penetrated the thick walls of the Pentagon yet," Nunn said. "The current planning for the fiscal 1988-1992 Five Year Defense Plan starts from a budget request of $340 billion for fiscal 1988, and soars upward. That is a 15 percent real growth increase over the best-case level [the Department of Defense] will get."

The Pentagon's spending plans, compounded over five years, according to Nunn's calculations, were "$300 billion to $450 billion out of touch with reality."

In the fall of 1986, Reagan issued his final instructions for preparing the fiscal 1988 budget, to be presented in January, 1987.

According to congressional and Pentagon sources, Weinberger's internal five-year plan at that point was about $96 billion higher than Reagan was willing to allow, and close to $450 billion higher than Congress was likely to vote over the next five years.

In a last-minute flurry, $16 billion was cut out of the first two years, which still left the Pentagon about $80 billion higher than Reagan's upper limit in the last three "out years."

"The Pentagon could not accommodate the most generous commander in chief in the post-World War II era, let alone reality," one Pentagon staffer says.

There was no hint of the extra $80 billion in the five-year budget projections submitted to Congress.

In a Senate Appropriations Committee hearing Feb. 3, Weicker accused the defense department of misleading Congress by keeping "two sets of books" and concealing the second and higher figures from congressional review.

The higher internal Pentagon five-year plan is of critical importance, noted a congressional staffer. Those internal numbers, he asserts, "represent all the detailed program decisions," which means how many planes and tanks to buy, the readiness levels to be funded, and so forth.

"All those actions are hooked into the higher figures," he says. "They're buying into huge payments in a few years with money that won't ever be there. We're starting things we can't finish. The Pentagon is setting up a roller coaster of starts, stops and slowdowns that guarantee waste and inefficiency."

The taxpayer will wind up paying more, and getting less defense in return.

The budget documents sent to Congress do suggest the Pentagon isn't laying out all the future costs of its programs. Only about $1.5 billion in advanced procurement funds are shown for two new aircraft carriers that will cost about $5 billion to complete.

"We're hiding the magnitude of future commitments from the Congress," one Pentagon source says. "On the one hand we're asking Congress for two-year budgets for more stable planning, while at the same time we're producing a plan guaranteed to self-destruct."

To make matters worse, there is plenty of evidence suggesting that even the Pentagon's higher internal figures won't be enough. The low cost estimates of years past are now causing a major reduction in the modernization rate, at increased cost. The original 1983-1987 five-year plan is full of examples:

In 1983 the Pentagon predicted it would buy 96 F-15's in 1987, at $31.5 million apiece. This year it is requesting 48 of the fighters at $42 million per plane.

In 1983 the Navy planned to buy four Aegis cruisers this year at $958 million each; the cost per ship is now more than $1 billion, and only two cruisers will be procured this year.

In 1982 the Army planned to buy 1,080 M-1 tanks at $2 million each in 1987. Those plans have since been scrapped, with M-1's now costing $2.5 million, the Army proposed to buy 840 this year.

Throughout last spring, Weicker pursued his fruitless quest for full disclosure of the Pentagon's internal plans. He wrote the Pentagon's inspector general, and in late April the deputy inspector general, Derek Vander Schaaf, confirmed that Weicker was essentially correct: The internal five-year plan was indeed higher by $77 billion.

Weicker was quick to note that "the false figures given to Congress are used in calculating the federal deficit," putting Weinberger in the awkward position of undercutting even Reagan's tepid commitment to the Gramm-Rudman law's deficit-reduction targets.

In a mid-May Senate Appropriations Committee hearing, Weicker challenged Weinberger directly: "Why are there two five-year plans, one for internal consumption and one that you present to Congress?"

Weinberger called the internal plan a "compilation of figures the services feel would be desirable. . . . [They] are not hesitant about publishing what they wish."

While Weicker has been striving to nail down the five-year plan beginning in 1988, the administration is deep into preparations for the next budget cycle, the 1990-1994 plan.

The Pentagon has been told by the Office of Management and Budget to plan on 3 percent real growth annually through 1994. Fred Ikle, Under Secretary of Defense for Policy, passed these tentative planning targets along to the armed services in late February. Ikle's numbers for the first three years, 1990-1992, matched exactly the lower projections submitted by Reagan with his fiscal 1988 budget.

In April, Taft issued a memorandum calling for a long-range review of defense plans, 15 years into the future. That review would assume that every cent of the Pentagon's much higher internal five-year plan would be approved and, further, that the budget would continue to grow to the year 2002.

The military services were told, in effect, that the spending increases of the last six years would be the norm for the next 15 years, Gramm-Rudman and Ikle's memorandum of the month before notwithstanding.

The purpose of the long-range review, under way this summer, is to begin planning for the next five-year cycle, beginning with the fiscal 1990 budget.

"They won't be following the President's guidance on future spending," one critic says.

He contends that the long-range review can't be based on the lower provisional numbers Ikle passed along from the Office of Management and Budget, because they're not tied to specific programs. The only document that lays out spending and objectives by program—how many tanks, ships, spare parts, manpower strengths—is the internal five-year plan.

"They couldn't face up to a $77 billion disconnect with the numbers sent over to Congress," the critic says. "Now they're going to make a 15-year projection based on the higher numbers they've been keeping from the Congress."

Instead of coming closer to the stark fiscal realities on Capitol Hill, the internal Pentagon planning process is moving further away from it. If Congress holds to between 0 to 1 percent real growth in coming years, the gap between the Pentagon's internal plans and the amount of money likely to be available compounds into at least a $1 trillion difference.

[From the Wall Street Journal, Aug. 21, 1987]

POLITICS AND POLICY

(By Tim Carrington)

WASHINGTON.—In offices sprinkled throughout the Pentagon, budget specialists are poring over plans for buying hundreds of new warplanes, tanks and missiles, as well as launching a new class of submarines and possibly, gearing up the first generation of Star Wars weaponry.

Fed into their computers are five-year budget projections handed down by the Defense Department's top brass. These projections envision the military budget swelling from the current $282 billion to about $412 billion in fiscal 1992.

But the actual defense budget isn't likely to approach this level. Some of the Pentagon's strongest supporters in Congress foresee a rise to only about $350 billion by 1992, meaning that the department's assumed growth rates, which dictate planned production rates for more than 3,000 military pro-

grams, could be more than $150 billion out of whack for the five-year period.

ENORMOUS AMOUNT OF LOST MOTION

The Pentagon's military planners are starting to gripe about it. "For the last two years, the services have been given fiscal guidance that is junk," complains a Marine Corps officer in charge of planning certain high-cost programs. Like hundreds of other military planners, he knows he'll someday be told to throw away the plans he is working on and draw up new ones to meet the fiscal constraints imposed by a tight-fisted Congress. "There's an enormous amount of lost motion because of the reprogramming that we have to do," says Vice Adm. David Jeremiah, who heads the Navy's planning office.

However, attempts to plan military programs at more likely funding levels have been squelched. Drawing up production schedules under less robust budget assumptions is regarded as defeatist rather than realistic.

An office in charge of buying Navy aircraft recently suggested such an approach and was chided by David Chu, the Pentagon's director of program analysis and evaluation. "It is inappropriate to initiate action undercutting that budget," he said in a memorandum fired off earlier this month. "Developing lower funding levels for naval aviation, at this time, would have exactly that effect."

Currently, the Pentagon's internal spending plan for the next five years is out of line not only with what Congress is likely to authorize but with President Reagan's own budget blueprint. Last January, the administration told Congress that it had scaled back its weapons-buying ambitions and that for the next five years it would seek growth of 3% a year, after inflation. However, the budget plan still used inside the department envisions this level of growth for only the next two fiscal years. Then, the heftier growth rates of the buildup would return for fiscal years 1990, 1991 and 1992, according to the internal projections.

"It's institutional self-deception," says an Air Force budget analyst who asked to remain annoymous.

LIVING BEYOND ITS MEANS

Under any interpretation, the Pentagon's long-range plans show an institution that appears bent on living beyond its means. Even if Congress were to provide full funding for the 3%-a-year growth plan the administration called for, the Pentagon would be $77.2 billion short of funds needed to carry out its five-year plan. Moreover, that assumes the most optimistic funding scenario. Under the more likely outcome that Congress allows the defense budget to grow at a rate equal to the rate of inflation, the Pentagon's five-year plan could be as much as $230 billion too high.

But even that may be too optimistic. The congressional budget committees appear determined to keep the defense budget flat. If that pattern holds for the next five years, the Pentagon's arms-buying plans would need about $400 billion more than Congress seems willing to give.

"The next president is going to inherit this defense situation, and there'll be weeping and gnashing of teeth," predicts Lawrence Korb, assistant defense secretary during the first Reagan term and currently dean of the Graduate School for Public and International Affairs at the University of Pittsburgh.

Robert Helm, the Defense Department's comptroller, says the big numbers in the Pentagon's plans shouldn't cause such anxiety. "It's not a budget; its a planning tool," he says. "It must be readjusted every year when we finally see what Congress gives us."

CHAOTIC ADJUSTMENT PROCESS

However, the adjustment process is getting more chaotic each year as the gap between Pentagon plans and congressional appropriations widens. "People at the last minute force 10 pounds into a five-pound bag," says Mr. Korb. Painless cuts stemming from lower-than-expected inflation and reduced fuel costs have been largely used up. Michael Burns of Business Executives for National Security, a private watchdog group, expects many of the cuts to come out of budgets for training, ammunition and spare parts. "We'll have a readiness and sustainability slump worse than anything we saw in the Carter years," he predicts.

Often the costs of weapons rise as the Pentagon scales back its purchasing plans. For example, budget cuts for fiscal 1988 forced the Army to drop its request for M-1 tanks to 600 from 815 this fiscal year. The cut drove up the price of each tank to $2.6 million from $2.3 million. The Navy pushed up the cost of each F-18 aircraft when it chopped its request for fiscal 1989 to 72 planes at $32.5 million apiece from 84 planes at $30.7 million each in fiscal 1988.

Sticking with budget wishes others consider unrealistic has long been a hallmark of Defense Secretary Caspar Weinberger's political strategy of refusing to give ground early in a struggle. During the debate surrounding the fiscal 1988 budget, he remarked to a reporter, "If you were realistic, you would never have realized as much military strength as we have gained since 1981."

"He will not let people begin to plan for what we're likely to get because he thinks it becomes a self-fulfilling prophecy," says Mr. Korb. However, some lawmakers are perplexed that the internal plan doesn't even match the official administration budget projections. Sen. Lowell Weicker (R., Conn.) has charged that "the Pentagon continues to keep two sets of books." Frustrated by a recent letter-writing flurry with the Pentagon, he's pushing a legislative amendment that would require the department to use internal budget plans consistent with the ones submitted publicly.

Meanwhile, Pentagon budget specialists began work this summer on a 10-year plan. This, too, is built on the same hugely optimistic internal projections, so that through the end of the century, the mismatch between planned-for funding and likely funding approaches the $1 trillion mark.

Mr. WEICKER. Mr. President, I hope this amendment will have the approval of my colleagues. If this amendment is adopted, then we will know to a far greater extent possible than is the case today what the eventual cost will be of what we are voting on today. That, in the long run, will put our defense dollars to the greatest possible use.

I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. QUAYLE. Mr. President, I yield myself such time as I may consume.

Mr. President, this amendment will be adopted. It will be adopted though some of us have some specific concerns about it. We have had some discussions with the Senator from Connecticut about exactly what the amendment is going to attempt to achieve. I have no problem with getting documentation over here that would be consistent with what the Department of Defense or any other Department would supply when they submit their budgets. But when you are dealing with a 5-year plan, particularly in the Department of Defense, I think we have to pay special attention about what kind of requirement we are placing on DOD, and the man-hours, what kind of requirements and how that document will be treated when it gets over here.

I assume that document will remain classified. If it does remain classified, certainly we can put our staffs busily to work to make sure that all the numbers add up. I really think when you start looking at a 5-year plan beyond R&D and procurement—those are the big items, and I think those are the items the Senator is interested in—and get down to the O&M and all of those details on a 5-year basis, you are talking about an extraordinary amount of work, an extraordinary amount of material. I think that the kind of scrutiny that we want to give is to make sure that the recommendations sent over here add up.

I want that and I think the Senator from Connecticut wants that. That is the genesis of this amendment that he, in fact, is offering.

We will not be voting on it. The amendment will be adopted and we will go to conference. We will continue to work with the chairman of the committee, the Senator from Connecticut, to see if there is anything that, in fact, might be worked out to accommodate his desired objective, to make sure that we get the desired information and in the manner as he has described and where we get the R&D and procurement for a 5-year basis, so be it.

On getting into all of this other documentation, when you start getting this out, even if it were classified, if all of this information suddenly gets out, and I will not say handed over, you are talking, potentially about some sensitive matters. I want to make sure that all the safeguards are taken care of. Obviously, the safeguard of Congress knowing what the Department of Defense is doing in this area is very important, but also how they go about making this additional request.

We have always talked around here about paperwork reduction. Many have been concerned in the Armed Services Committee about the number of reports that we require out of the Department of Defense. This is an extraordinary request. I guarantee it will take a considerable amount of man-hours, a considerable amount of paper, that will go into the production of this material for the Congress. They will

have to go back and say that since this is no longer an internal document, the Secretary of Defense will make his determination. They will change the way they are doing it now. It will not be just internally and kept internally.

I am not saying that the numbers will be different, but they will go back and figure out that all this information has to go up to the Congress, all this information. They will go back and start figuring out all sorts of ways.

I would hope that we might be able to achieve the Senator's objective because he wants consistency. He does not want two budgets. It is a legitimate concern and a legitimate request. No one can ask for anything less, quite frankly.

I hope that over the course of the debate on this bill and when we go to conference, we might make sure that this amendment does what the Senator wants. I do not have any problems in the consistency, but I do express some concerns, and I want to go on record with them, about how this amendment would be implemented, how we would be able to contain the classification once it came over here, getting that kind of information on a 5-year basis that in the past has been used for internal use in the Department of Defense only.

We are going into a territory that we have not gone before, and before we do that I want to hopefully make sure that we are not going to be too disruptive. I am sure it will be disruptive, but not too disruptive and too overly burdensome on those who will have to prepare this document. We have enough of a problem making sure that other budgetary matters and things are taken care of. In an additional request, particularly of this magnitude, I believe that we ought to use extreme caution.

Mr. WEICKER. Mr. President, I thank the distinguished Senator from Indiana for his assistance on this matter, but I assure him rather than additional burden and additional paperwork it just stands to reason that all you have to do is produce one 5-year plan now, not two. The paperwork and everything else will be cut in half. They will not have to sit up nights to figure out how they are going to go ahead and pull the wool over our eyes—publish one set of books. Believe me, from the point of view of the cost and effort and the result it will achieve in giving us the tools to make the right decisions, they will have done a far better thing than is the case right now.

I do not know of anybody else, Mr. President, who desires to speak on this matter. I am perfectly willing to have it go to a vote. I yield back the remainder my time.

Mr. QUAYLE. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Both Senators have yielded back their time. All time has expired. The question is now on adoption of the amendment.

The amendment (No. 709) was agreed to.

Mr. WEICKER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BYRD. I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, there will be no more rollcall votes today.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business not to extend beyond 6:30 p.m., that Senators may speak therein not to exceed 2 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

WE HAVEN'T HEARD THE FINAL WORD

Mr. DOLE. Mr. President, for most Americans—and for most people outside this country, as well, I suppose—almost everything they know about the Senate comes from the occasional headline on this-or-that Senate vote. Sometimes those headlines send the right signal; sometimes, I fear, they do not.

There are probably some headlines this morning about the vote the Senate took last night on the Helms amendment on Contra aid. This happens to be one of those occasions where the headlines may not tell the whole story, or even the real story.

Let us keep last night's vote in perspective.

The fact is, this body is closely divided on this question of Contra aid today, just like it has been in the many votes we've taken over the past 3 or 4 years.

Some Senators—I happen to be one of them—believe that Contra aid has been a necessary, and effective, part of a broader policy to keep the pressure on the Sandinistas, to respond to our legitimate concerns. We think the fact that we've kept the heat on Managua through Contra aid is one of the main reasons there is any hope for a negotiated settlement now. Without Contra aid, there just would have been no Guatemala City accord.

Let me say, without revealing any confidences, that virtually everybody I spoke to on my recent trip to Central America would agree with that statement.

But of course, there are some in the Senate who disagree with that assessment. They have voted against Contra aid, and they will do so again, I suppose, if the President seeks additional aid. I understand and respect their view, ever though I might not agree with it.

But the fact is, the balance of power—if that's the right phrase—the balance of power on this issue is the group of 15 or 20 Senators from both parties who are kind of on the fence on this matter. They see the value of the Contra aid program; but they have real and legitimate concerns about it. For them, the votes that we've had have been tough, tough calls. Their honest judgment was that this is not a clear cut, black-and-white issue.

I think that, while almost of that group voted against the Helms amendment last night—including some who have voted for Contra aid each of the past four or five times—almost all of them voted against the Helms amendment, not on its basic merits, but because they thought this was just not the right time to address this issue.

Last night's vote was not a vote against Contra aid; it was a vote against voting on Contra aid at this time.

So, this morning, it seems to me, we are pretty much where we were before last night's vote on this issue.

We want to give the Guatemala City accord every chance. Most of us think that—to do that—we ought to hold off on additional military aid until after the November 7 deadline in the Guatemala City agreement. Meanwhile, though, we need to keep the Contra aid option open—as an indispensable element in keeping the pressuring on Ortega and his gang to fulfill their commitments; to keep their word. That is what at least half of this Senate feels, in my view.

So I hope no one misreads that vote last night. I hope Daniel Ortega doesn't because that would be dangerous.

But above all, I hope that the young men who are risking their lives—and who, in some cases, have already sacrificed their strong young bodies and their health in that cause—I fervently hope they will not misread the vote.

The Senate has not spoken the final word on this matter yet. And—at least as far as I am concerned—we will not; not until we know if November 8 will dawn with new hope for democracy in Central America; or, instead, will just be the first day in the newest phase of a long struggle to bring freedom to people who so badly want and deserve it.

NATIONAL POW/MIA RECOGNITION DAY

Mr. DOLE. Mr. President, today marks another particularly significant day—"National POW/MIA Recognition Day." All across this Nation, Americans will gather to pay tribute to servicemen and women, our former

POW's who sacrificed so much for their country and returned to enjoy, once again, the fruits of their efforts. But there is another very special group that will be honored whose whereabouts remain a mystery—our Nation's MIA's.

Literally hundreds of POW/MIA Day events are being held nationwide. Many of those Americans attending ceremonies can closely identify with the hardships and sacrifices of war, having served their country when it called. Many of us here in the body know full well the loss that is felt when friends and relatives do not return, having made the ultimate sacrifice. Thus we can realize the pain of the MIA families who have kept the faith, endured false hopes, and continued to highlight the POW/MIA issue in every way possible.

Their efforts have been rewarded. From those first days 18 years ago when public awareness was difficult at best—to the high national priority that it is today, the POW/MIA issue is one that we, as Americans, must reaffirm to resolve. Much progress has been made, but much remains to be done. We must continue to keep these special Americans foremost in our minds and in our hearts—as I have said many times, we will never forget, nor will we rest until a satisfactory accounting has been made of those brave Americans.

AIR FORCE, 40TH BIRTHDAY

Mr. DOLE. Mr. President, I would like to take this opportunity to congratulate the U.S. Air Force on its 40th birthday. It seems an appropriate coincidence that we celebrate the Air Force's anniversary one day after we commemorate the bicentennial of our Constitution. Defense of that Constitution and the protection of its guaranteed rights and freedoms are the very reason we have an Air Force.

Over the past 40 years, our Air Force has successfully met constantly changing threats that took Air Force people to Tempelhof during the Berlin airlift; to "Mig alley" in North Korea; to increased nuclear alert during the Cuban missile crisis; and to conventional combat in Vietnam. In both Korea and Vietnam, meeting the threat subjected some of our airmen to years of brutal imprisonment and left far too many unaccounted for. In more recent times, the Air Force was part of the liberating force in Grenada and the striking blow against terrorism in Libya.

But most important, the Air Force has been and continues to be, the most powerful force for peace under the control of mankind. All that comes from a coherent match of deterrent strategy and strong, flexible forces.

More than 1 million active Reserve, and civilian men and women serving in the Air Force today continue the proud traditions of courage and dedication pioneered in the Air Force's first 40 years. Through their unswerving commitment to meeting the challenges of national defense, we will see another 40 years of freedom through strength.

THE SHULTZ-SHEVARDNADZE MEETING

Mr. DOLE. Mr. President, this morning we were all pleased to hear that the talks between Secretary Shultz and Foreign Minister Shevardnadze have removed the remaining obstacles to an INF Treaty. Now our Geneva negotiating teams will try to iron out the details as soon as possible.

While we congratulate the President on this achievement, let's keep our feet on the ground. Near-agreement and agreement are not the same thing, and the details can be very important. Our negotiators—and I hope the Soviet negotiators—should be instructed to roll their sleeves up and get to work. Pay strict attention to those details, because this Senate is going to scrutinize any treaty very carefully.

I believe that verification is going to be a major concern, and this is an area in which details count. For example, onsite inspection has to be at the right time and place, and carried out in a way most likely to detect noncompliance, I know Max Kampelman and his team, and I am sure they will be right on top of such details.

I will have to reserve further judgment on the INF Treaty until I see the details, but I think there are a few other observations worth making at this time.

The progress we have had so far on INF is instructive for us here in Congress. Interestingly, INF is the one area in which the Congress did not micromanage the President's negotiating strategy, and did provide him the weapons to back it up.

We authorized and appropriated the Pershing-2 and ground-launched-cruise-missiles to counter the Soviet SS-20 missiles. We deployed in the face of the Soviet threats, public disruption in allied countries, and a Soviet walkout from the arms talks. The Soviets stayed away from the bargaining table for nearly a year—until just after Ronald Reagan's reelection. I wonder if there was any connection?

This morning we also heard another bit of good news: The Soviets have agreed to formal talks on verification of the Threshold Test Ban Treaty. At the beginning of the year, some in this body suggested that we should give our advice and consent to this treaty before the verfication provisions were negotiated. Republicans, led by Senators EVANS and KASSEBAUM, said no—let's see it all first, and then we'll consider advice and consent. Now we may have a chance to do that.

I mention these points because they are relevant to what we are doing here this week on the defense bill. This morning the President was also optimistic for a start agreement—and let's face it, that's the big one. I still caution that we should keep our feet on the ground, but if there is anything we can do to help get such an agreement, we should do it.

Instead, the Senate has decided to tie the President's hands to the narrow ABM Treaty interpretation—an act which can only encourage the Soviets. And we also have looming amendments which would curtail nuclear testing and even bind us to bits and pieces of the unratified, violated, and expired SALT II Treaty. Again, such measures only undercut our negotiators.

I was encouraged to hear the President's remarks this morning, and I hope we can realize his hopes for good arms control agreements. I am, however, discouraged by legislation like Levin-Nunn, or any measures on SALT II or nuclear testing. These are a far cry from the backing we gave the President on INF, and I fear the arms control results could be equally different.

ECONOMICS OF HOSTILE TAKEOVERS—SUPPORT FOR S. 1323

Mr. PROXMIRE. Mr. President, as the Members of this Chamber are aware, I am firmly of the view that the pace of hostile takeover activity is bad for America, especially those takeovers whose purpose is to manipulate the price of the target company's stock in order to make a fast buck. In my judgment these takeovers do irreparable damage to our businesses, our work force and our communities. This is not to say that all hostile takeovers are bad. But on balance, takeovers as they are being conducted today, do more harm than good. And, I truly believe that the Tender Offer Disclosure and Fairness Act, S. 1323, that I have sponsored with a number of my colleagues on the Banking Committee is absolutely essential for the long-term well being of our country.

Mr. President, I rise today to address one particular aspect of the hostile takeover problem—the economics of this pernicious phenomenon.

Mr. President, there is very little disagreement that following the raider's trial, we find a swathe of decimated corporations, crippled by debt, compelled to sell off productive assets at fire-sale prices, and unable to marshal the financial and managerial resources necessary to meet foreign competition. Unequivocal testimony throughout lengthy hearings before the Senate Banking Committee establishes a fur-

ther grim reality: that the devastating toll on American corporations is the same whether or not the raiders actually get their hands on the corporation they put into play. Indeed, in many cases raiders have no intention of acquiring and running these corporations themselves; they simply manipulate the market to create an auction-block atmosphere and then arrange a private payoff through greenmail. The net fanancial result is a loss of productive corporate resources, while the raider, swollen with cash, sets his signts on ever-larger targets.

The devastation wreaked on American corporations by the hostile takeover phenomenon is mirrored in the adviser affects on American workers. It has been estimated that in recent years along, the takeover frenzy has affected hundreds of thousands of union and nonunion jobs as companies shut down plants and sell off productive assets to service the enormous debt incurred in the takeover process.

Additionally, when a company is forced to shrink as a result of a hostile takeover, local communities that had some to depend upon the corporation incur drastic social and economic costs. Budgets for schools, police, fire and other social services needed to make our communities fit places to live and raise children are of necessity cut.

For the economy at large, takeover mania has swamped the Nation with unprecedented levels of debt, and this at a time when consumer and Government debt is already brimming. Because of hostile takeovers, American corporations sold 263 billion dollars' worth of debt in 1986, double the 1985 figure, and five times the figure in 1982. Last year, for the first time ever, American industry spent some $177 billion in hostile raids, more than spent on new plant and equipment. Much of that money was spent servicing debt. Come the next recession, Mr. President, our corporate sector is in big trouble.

And, yet Mr. President, although the case is clear that there are serious injuries caused by hostile takeovers and that legislation is needed to eliminate raider abuses, efforts to right these wrongs will not go unopposed.

Too much is at stake for corporate raiders, and they and their cohorts in the takeover game are too well placed not to oppose efforts every step of the way.

Mr. President, there is one thing about hostile takeovers on which everyone, raider and prey, agree: at the end of the day, the raider and those in his pay pocket enormous sums of money. I am not talking about millions of dollars, Mr. President, I am not even talking about tens of millions of dollars, I am talking about hundreds and hundreds of millions of dollars in profits.

To justify their obscene profits, raiders generally invoke a number of economic arguments purportedly confirmed by economic studies.

On examination, these arguments are usually little more than variations on the following themes: First, the takeover game puts money, in the form of a premium, into the pockets of target shareholders, and therefore raids increase shareholder wealth, and second, hostile takeovers replace incompetent managers, while the mere threat of such takeovers may spur more efficient management.

My reason for addressing this body today, Mr. President, is simply to set the record straight with respect to the worthlessness of arguments like these and to demonstrate that not only are hostile takeovers bad for legitimate business, bad for labor and bad for our communities, but they are a disaster for the U.S. economy.

To be specific, Mr. President: Takeovers almost certainly reduce the overall wealth in our economy. The proponents of hostile takeovers frequently focus on the premiums paid to shareholders of the acquired company. They conclude that since a premium is paid, the transaction must be wealth creating. But the short-term financial gains that in certain cases may be realized by shareholders of a company subject to a hostile takeover are significantly offset by losses, from a number of sources, and further reduced by the costs associated with takeovers. For example, Professor Ellen Magenheim of Swarthmore College, in her own empirical research, found that where the acquiring firm is a public company, is own shareholders frequently lose value when a takeover is completed. Professor Michael Jensen, usually a proponent of hostile takeovers, also notes in a survey article that there is a "systematic reduction in the stock price of bidding firms."

Furthermore, even with respect to the acquired company's shareholders, a recent study by Professor Donald Margotta of Northeastern University shows that, in the long run, these target company shareholders are not worse off by rejecting the tender offer premium. In fact, over the long-term, shareholders do just as well by defeating the tender offer and holding their company's stock as they would have done had they sold out for the offered premium. Thus, Mr. President, contrary to the assertion that tender offers at least increase the wealth of target company shareholders, there is, in fact, no long-term gain to these shareholders whatsoever.

Moreover, as the business press frequently reports, bondholders in target companies incurring debt as part of a hostile takeover or attempted hostile takeover experience dramatic reductions in their investments which, again, offset some of the short-term gains of target shareholders. Standard & Poor's recently asserted, for instance, that recapitalizations under the threat of a hostile takeover damage credit quality.

In addition, as I am sure that every member of this body recognizes, transaction in hostile takeovers, such as lawyers' fees, investment bankers' fees, etc., are substantial. In the Unocal deal involing T. Boone Pickens, the investment bankers' fees alone exceeded $50 million. These amazing costs, however, are seldom included in calculating the true price of hostile takeovers.

In sum, taken as a whole—and particularly noting that target company shareholders do not gain in the long term—it is clear that hostile takeovers cannot be shown to be increasing the overall wealth in our economy.

It is well-managed companies, not the worst-managed companies, that are the subject of hostile takeovers. As I noted earlier, Mr. President, hostile takeover proponents also assert that takeovers produce a more efficient use and management of assets by targeting poorly run companies for acquisition. The more recent evidence flatly contradicts this theory. Separate studies by, among others, Professor F.M. Scherer of Swarthmore College, and Professor Louis Lowenstein of Columbia University, recognized specialists on acquisitions and mergers, conclude that target companies are generally good performers. This is to be expected; it is easier and more profitable to take over a company that can support a high debt level, that has strong assets to sell off, and that can provide good cash flow—the key ingredients of a well-managed company—than to take over a company that does not have these attributes.

The performance of target companies falls after acquisition, causing inefficiencies and hurting the economy. Proponents of hostile takeovers try to justify them on the basis that the acquiring company will improve the performance of the target company after the acquisition. In fact, however, studies by Professor Dennis Mueller of the University of Maryland, by Professor David Ravenscraft of the University of North Carolina, and by Professor Scherer, have all concluded that acquired firms' performance deteriorates significantly after the takeover. Studies by McKinsey & Company, as well as a recent article by Professor Michael Porter of the Harvard Business School, reach similar conclusions. It therefore seems clear that, on average, many target company managers do a better job than the acquiring company's managers in running the target company.

A large number of hostile takeover attempts in recent years have been en-

gaged in by "raiders" that merely put companies into play in order to be bought out at a higher price in a recapitalization or through greenmail, with no intention or effect of replacing existing management. Proponents of hostile takeovers also claim that takeovers root out inefficient management. While some early hostile takeovers may have been effected by operating companies that wanted to own and manage the target company to attempt to obtain synergies or other benefits, many attempted hostile takeovers today are designed simply to force existing management to recapitalize the company or pay greenmail. As is the case with all of T. Boone Picken's "raids" to date, the "raider" actually never takes control. Obviously, Mr. President, these "raids" are not designed to replace bad management. Also, as noted above, it is not the poorly run companies that are usually the targets of takeovers, and the acquired company's performance usually deteriorates, rather than improves, after the acquisition.

No evidence was found which suggests that the normal competitive process in our economy is failing—that assets are not otherwise moving to their most productive use, or that bad managers are not being removed. Numerous means exist to ensure that assets are used productively. For example, there were over 1,200 divestitures last year, compared with about 40 hostile takeover attempts. And bad managers are consistently removed by boards of directors. Not only are these means effective, they do not cause the same economic dislocations and high costs associated with hostile takeovers. Nations such as Japan and Germany which, for all practical purposes, preclude hostile takeovers, obviously have very strong economies. Clearly, hostile takeovers are not necessary to improve a nation's efficiency.

There are economic risks created by hostile takeovers, as yet unquantified, that may have serious long-term consequences for our economy. A central feature of almost all hostile takeovers today is that they convert equity into debt. Also, a number of managers have testified before Congress as to the reductions in R&D expenditures caused by takeovers or attempted takeovers and the usually accompanying need to provide for increased debt service. A number of economists and even investment bankers, such as Felix Rohatyn of Lazard, Freres & Co., are also now beginning to believe that this movement to debt, and the short-term perspective it fosters, threatens the long-term stability of our economy. For example, testifying with respect to takeovers and using as an example the restructuring of the oil industry for which T. Boone Pickens claims credit, Mr. Rohatyn stated:

> The mergers of Chevron-Gulf, Occidental-Cities Service, Mobil-Superior all occurred as a result of raids or the threat of raids. The deterioration in their combined balance sheets has been dramatic. Far from being a healthy restructuring, the oil companies involved are cutting exploration sharply, a practice our country will pay for dearly when the next energy crisis occurs. With their high levels of debt, they could be in serious difficulty if the price of oil declines again. If one were to write a scenario about how to get the United States into trouble as far as energy is concerned, it would be hard to improve on what has happened.

Hostile takeovers do not represent the "free market" at work. Proponents of hostile takeovers claim that such takeovers are simply the actions of the free market. However, free markets rely on (1) willing buyers and willing sellers, (2) with full information, and (3) equal bargaining power. Coercive takeover tactics eliminate the idea that hostile takeovers in fact involve willing buyers and willing sellers. Misleading disclosures, inadequate information, and the failure to disclose secretive "group" trading activities all underscore the lack of full information. Other exploitive tactics, such as "parking" of securities, further underscore just how far from a "free market" is the takeover game played by today's raiders.

Moreover, economic studies supporting hostile takeovers are deficient because they rely exclusively on one concept—namely, that stock price movements within a short period (usually 5 to 20 days) around an "event" tell the whole story. The proponents of hostile takeovers, recognizing that the studies that review actual company behavior do not generally support their position, rely almost exclusively on stock price studies. The cornerstone of these studies is a single "event," isolated in time, such as the passage of a State law deterring certain takeover abuses, or the adoption of a shareholder rights plan. If the stock price drops within a few days after the event, these economists conclude that the subject of the event will result in greater management entrenchment and corporate inefficiencies, thereby leading to lower returns for shareholders. All of these negative effects are supposedly recognized almost instantly by the market, resulting in the lower stock price. Despite the theoretical deficiencies in these studies as shown by numerous economists, the studies have also been shown to be overwhelmingly sensitive to choice or time frame. For example, Professor Margotta showed that, in the Securities and Exchange Commission's study of the Ohio takeover law, using a time frame of even 1 day longer than that used by the SEC, was sufficient to generate a contradictory result. These obviously flawed studies cannot be the basis of public policy.

In sum, the economic argument against hostile takeovers is overwhelming. At the same time, Mr. President, I do not intend to get into a debate over the macro- and micro-economic aspects of this problem. I fully recognize that eminent economist frequently differ on many economic problems. Thus, I would say to my colleagues that even if you conclude that the long-term economic impact of hostile takeovers is unclear, you must conclude that both the short- and long-term adverse social costs are enormous and that legislation in this area is necessary.

I cannot conclude, Mr. President, without summarizing what I believe are the three public policy implications that flow from the economic and social findings I have outlined above. First, takeover abuses should be subject to evolving and flexible regulatory controls. The States, which have historically regulated corporate governance matters, are closest to the constituencies most impacted by takeovers and can react quickly to the evolving nature of the takeover process. In contrast, Congress is not able to revisit this area on a continual basis.

Second, the central role of corporate directors in the takeover process should be strengthened. The board of directors can be more efficient at evaluating and disciplining management, without the enormous costs and disruption cased by hostile takeovers.

Finally, raiders' manipulative actions should be deterred by the enactment of S. 1323.

In conclusion, Mr. President, it is clear that the situation is grave and the need for action compelling. The committee therefore intends to move swiftly but deliberately to address the deficiencies in current law that are undermining the fairness and integrity of or securities markets and inhibiting the sound operation of American corporations. I am confident that this great body will support these efforts.

CLEAN AIR AND ALTERNATIVE FUELS

Mr. BURDICK. Mr. President, today I come to the Senate with good news for our environment and our agricultural economy. I am talking about the prospects for methanol and ethanol as fuels of the future.

It is now clear that significant new ethanol and methanol markets can be created. It is entirely realistic to expect a variety of benefits for North Dakota and the Nation. From cleaner air in our cities to new markets for farmers to a more reliable source of affordable fuel, ethanol holds much promise. We are working hard in the Environment and Public Works Committee to make that promise come true.

The development of markets for alternative fuels is a major concern for our ethanol and methanol producers, our agriculture community, and for my State's economic future.

While State and Federal tax incentives have assisted these fledgling industries, more must be done to encourage the use of alcohol fuels. Greater use of alcohol fuels could improve the quality of the air in polluted urban areas around the country. Farmers, as well as ethanol and methanol producers, will benefit as new markets for their products are developed in the so-called clean air nonattainment areas.

Make no mistake—there is a need for cleaner fuels in American cities. Although North Dakota has few pollution problems with its air, nearly half of the American population lives in areas that fall short of our standards.

Today there are some 76 areas not meeting the ozone standard and about 40 areas not meeting the carbon monoxide standard of the Clean Air Act. Increased use of cleaner burning ethanol and methanol will help many nonattainment areas comply with the standards established under the Clean Air Act.

Alcohol fuels offer the potential for significant reductions in auto emissions in these nonattainment areas. Urban areas such as Los Angeles, Denver, and New York have already developed programs which will encourage, and in some cases mandate, the use of alcohol fuels.

The south coast air basin hopes to have 20 percent of the automobiles in the Los Angeles area using alternative fuels by the year 2000. This would be a major step toward improving air quality in that area.

Amendments to the Clean Air Act, which will be reported in the coming weeks by the Environment and Public Works Committee, mandate the use of alternative fuels. For example, buses and taxicab fleets in urban areas would be required to burn methanol and ethanol in order to reduce air pollution.

In addition, the bill requires the use of alternative fuels in carbon monoxide nonattainment areas during the winter. Both of these provisions will create new markets for alcohol fuels. As a result of these mandates, the infrastructure necessary for the supply and distribution of alcohol fuels will be developed and expanded.

So where is the value to North Dakota and other rural States? Along with cleaner air in neighboring regions, increased use of alcohol fuels would increase domestic demand for grain. Above all, greater use of domestic alcohol fuels will make America less dependent upon foreign sources of energy.

I have been a consistent supporter of the alcohol fuels industry. Tax incentives have assisted this vital industry, but I expect the alcohol fuels industry will soon grow strong enough to stand alone. Specific markets for these fuels must be developed so that urban consumers can begin to appreciate the energy and air quality benefits associated with alcohol fuel use.

Many farm States have accepted gas-ahol. In North Dakota, 17 percent of the gasoline consumed in 1986 was gas-ahol. By comparison, less than 2 percent of gasoline sales in California were made up of gasahol. There is tremendous potential for increased use of alternative fuels in many urban areas. Many of these same areas have been unable to comply with existing Clean Air Act standards.

I support alcohol fuel provisions in the Clean Air Act. Increased use of ethanol and methanol in nonattainment areas is desirable public policy. It will help North Dakota's farmers; it will help methanol producers; and it will help clean up the air in many urban areas across America.

HENRY LINDEN

Mr. BURDICK. Mr. President, last week we paid tribute to Alf Landon, a great politician who just celebrated his 100th birthday.

Today, I would like to share with you a few memories of another political great—my friend Henry Linden, who passed away during the August recess.

Henry had never been elected to public office. He was rough cut, he had a slight German accent, and he would not have won a men's style show. Yet this man, this very common man, exerted influence over the political life of North Dakota, far greater than anyone would suspect.

I came to know Henry through Bill Langer and the Nonpartisan League, a political organization that held sway in North Dakota for many years at different times. His main occupation at that time was driving Langer's car. He probably knew more about this former member of this body than anyone else.

After the passage of Bill Langer, Henry continued his political observations and keen interest. He made heavy use of the North Dakota telephone systems in particular.

Since I am a member of the Nonpartisan League, I was in constant contact with him during most of my political life.

Henry knew thousands of people on a first-name basis. He added color to the North Dakota scene.

North Dakota has been know for its colorful politicians. Henry has now joined the others. He has joined Alexander McKenzie; early political boss Senator William Langer; A.C. Townley, organizer of the Nonpartisan League; and others who strode upon and off the North Dakota scene.

I will personally miss this man, who customarily greeted me by saying "Vot's new?"

Mr. President, I ask unanimous consent that Henry Linden's obituary and an article by Sid Spaeth from the Forum, a Fargo, ND, daily, be printed in the RECORD. Thank you.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FORMER AIDE TO LANGER DEAD AT 82

BISMARCK, ND.—Funeral services are tentatively set for Friday for Henry Linden, an aide to former North Dakota governor and U.S. Senator William Langer who was respected statewide as an astute politician in his own right.

"He was the most important lieutenant that Langer had all his life," historian Agnes Geelan said of Linden, who died Sunday at age 82.

"Wild Bill" Langer and Mrs. Geelan were active in the Non-Partisan League, an insurgent farmers' political movement that established North Dakota's state-owned industries, the Bank of North Dakota and the state Mill and Elevator in Grand Forks.

Linden, as Langer's longtime chauffeur and political confidant, was expert at discerning the way North Dakota's political winds were blowing, friends said.

"Politically he was one of the sharpest that I ever knew," said Secretary of State Ben Meier, a friend for more than three decades. "I'd put Bill Langer first and probably him second."

Linden died Sunday night at a Rochester, Minn., hospital, said Marjorie Zappas, a business associate in Jamestown.

HENRY LINDEN, POLITICAL FIGURE, DIES AT 82

(By Sid Spaeth)

Henry Linden, a German-born tavern operator who became North Dakota's quintessential cloak-room politician and a political prognosticator without peer, died Sunday in Rochester, Minn. He was believed to be 82.

Linden was the "eyes and ears" of controversial and powerful former Sen. Bill Langer, and remained the state's consummate political insider for more than four decades.

Linden died in a Rochester hospital after a short illness.

Friends described Linden's death as the "passing of an era."

"He loved politics," said Marlys Lundberg, a long-time aide to Democratic Sen. Quentin Burdick. "He ate, slept and breathed it. It didn't make any difference if it was Republican or Democrat. He'd get in there and mingle with them all."

Former Sen. Mark Andrews, a Republican, said, "He represented the last of the old-time politicians. He had a great feel for North Dakota and great feel for North Dakota voters."

Linden, who never ran for office, counseled and talked with hundreds of politicians over the past several decades. His knowledge of the state's politics was legendary. Tom Stallman, another long-time friend and aide to Burdick, said, "He was an encyclopedia of political information. The sad thing is that a lot of history died with that man."

Lundberg added, "He forgot more politics than the rest of us will ever know."

Linden lived on the fringes of politics—never making the headlines—but often leaving turmoil in his wake.

Lundberg said, "He was always in the background. He was always the guy in the back room."

Not surprisingly, Linden's counsel was highly sought by the state's politicians.

"He had a real nose for the voter, what the voter was going to do," said Stallman. "I don't recall him ever missing a shot on calling a campaign."

A German national. Linder was interned at Fort Lincoln south of Mandan during World War II in March of 1942. A 1942 Fargo Forum dispatch quoted local sources as saying "Linden had made himself very unpopular in the Braddock (N.D.) region by his pro-German conversation, his frequent 'mysterious' trips at night and his quarrelsome behavior.

The Forum stated that Linder's several attempts at becoming an American citizen were denied because of "criminal activities" including bootlegging. On one occasion, a petition signed by more than 50 residents of the Braddock area protesting the granting of citizenship was posted with the court.

Barely one month after his internment, Linden was released from Fort Lincoln, undoubtedly, friends say, through the work of Langer. He later became a U.S. citizen.

Ostensibly a chauffeur, Linden became the "eyes and ears" of Langer in North Dakota, said Agnes Geelan, who wrote a biography of Langer.

"He was just the kind of politician you would understand Bill Langer would have," Geelan said of Linden. "He would get the news that wouldn't get printed and get people to talk."

Linden later moved with his wife to Driscoll, N.D., where he operated a bar, owned some farm land and raised his family, said Albert Dronen, of Driscoll, who had known Linden since the mid-1940s.

He is reputed to have encouraged third-party candidacies, including that of James Jungroth, a Jamestown lawyer who ran for the U.S. Senate as an independent in 1974 and probably tilted the razor thin decision toward Milton Young over William Guy.

Jungroth denied Linden's input. "He wasn't even involved." Jungroth said. "But he would never discourage the rumor. He loved it. He got credit for more things he didn't do than for the things he did."

Linden also was legendary for his political predictions.

Jungroth said. "I question whether he ever lost a political bet."

Asked what made Linden so politically astute, Jungroth said "I don't know. What made Einstein, Einstein?

"He regularly traveled the state." Jungroth continued. "It was a hobby — an all-consuming one. He talked to people all the time. When he was 80 years old, he would just hop in his car and he would be gone for a week or 10 days. He would just tour the state."

Even when slowed by age, Linden continued his daily contact with politicians by long-distance telephone or visits to their offices.

Attorney General Nicholas Spaeth said Linden visited Bismarck several months ago, checked into a hotel near the capitol, and had politicians call on him there.

"He really was a giant figure in North Dakota politics," Spaeth said.

Gorman King, Sr., a long-time political colleague, said Linden repeatedly challenged him to bets on the outcomes of elections. And Linden always won.

When King was supporting George McGovern for president in 1972, Linden bet King that McGovern would not carry even his own state of South Dakota. Linden won.

Lundberg recalled that Linden called her one month before the 1986 election and predicted the upset victory of Kent Conrad over Andrews.

Norman Meland, of Driscoll, described Linden as a "generous man (who) never wanted anyone to know it was he who was behind the generosity."

But Linden made some enemies in Driscoll. One colleague said he infuriated some by "making a buck where no one else could."

Linden was a common man with little education, who spoke in a rich German brogue, friends said.

"He was not a polished gentleman," Burdick said. "But he was a real soul."

Lundberg said Linden looked like a sympathetic character. "He used to walk around and you would say. 'Oh, look at the poor thing.'" But she said Linden was anything but a poor "thing" and sympathetic people coddled him with enough information to make him among the most astute political minds in the state.

Linden was unpretentious. Gorman King Jr., an aide to Sen. Conrad, recalled seeing a picture of Linden, Langer and President Harry Truman hanging in Linden's bar in Driscoll. The picture was without frame and stapled to the wall "like it was OK to spill beer on it, or something," King said.

But Linden was always behind the scenes, shaping politics.

Ben Meier said Linden was among those in 1954 who convinced him to run for the secretary of state seat he has held since.

"He is going to be missed in political circles," Meier said. "He was around with people. He wasn't just sitting with one group talking, he was talking with different types, from business people to laborers in ditches."

Linden has lived in Jamestown since his wife died. He became ill in the middle of last week and checked himself into St. Mary's Hospital in Rochester, where he died Sunday night.

Lundberg said Linden is survived by two sons, Frank, Washington, Jim, New York, and a daughter, Arlene Linden-Beckman, Hannover, N.D.

SENATOR RIEGLE'S SPEECH TO THE HUNTSVILLE, AL, SPACE CLUB

Mr. HEFLIN. Mr. President, on September 2, the Huntsville, AL, chapter of the National Space Club had the distinct opportunity and pleasure to hear from our distinguished colleague from Michigan, Senator DONALD RIEGLE. I must say that in my judgment, Senator RIEGLE has done an outstanding and exemplary job since assuming the chairmanship of the Subcommitee on Science, Technology, and Space of the Senate Commerce Committee. His comprehension and understanding of the operations, needs, and requirements of America's Space Program is certainly to be admired and respected.

In this regard, it is with great pleasure that I ask unanimous consent to have Senator RIEGLE's remarks to the Huntsville Space Club included in the RECORD so that my colleagues may have the opportunity to read and study them.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR DONALD W. RIEGLE, JR.

Thank you for the opportunity to address the National Space Club here in Huntsville.

This is my first appearance before the Space Club, but your membership is very familiar to me in my work as Chairman of the Science, Space and Technology Subcommittee.

First, let me acknowledge the presence of the folks from the Marshall Space Flight Center and compliment them on their recent success with the test of the space shuttle solid rocket motor. In particular, I would like to salute J.R. Thompson for the fine job that he is doing. I understand that there is no doubt who is charge when J.R. is around. I get the feeling that if J.R. would get into the Super Tuesday Presidential primary, there's a good chance he'd carry Alabama.

I am greatly encouraged by our progress on the shuttle. I think we're going to really go next June, and I feel the enthusiasm building.

I also would like to acknowledge the presence of the folks from the Redstone Arsenal. I must admit that I have a great deal of familiarity with the Marshall Space Flight Center and its team despite the fact I have never been here before. However, I do not have the same familiarity with Redstone, and I hope I have a chance to talk to some of your folks during my visit.

Finally, let me note that it is good to see the Chrysler Corporation with a major presence in Huntsville. This is real evidence of the trend in the auto industry to become a major force in all areas of high technology manufacturing.

For all of us in the space community, the date January 28, 1986, is a day of profound and stark meaning. But I know I speak for America and for you when I say January 28, 1986, does not mark a crippling of the civil space program or U.S. leadership in space. America is going back into space—wiser—stronger—safer—with our character tempered and steeled by painful sacrifices along the way.

In the aftermath of the Challenger accident, our role as the leader of spacefaring nations came into serious question, as did the capabilities, direction, and the future of our space program. But today, the issue in my opinion, is not so much our capabilities, as our commitment.

We are now at the crossroads in the civilian space program. We aspire toward the visions of the Paine Commission and Ride Report, just as we are confronted with the hard realities of the Rogers Commission and other difficult contraints.

Our task requires us to meet these multiple challenges at the same time. That creates tough unremitting pressure all around. Our fate is to use and meet that challenge. We are, and we will.

Our success will depend not only on an all out work effort, but also our willingness to make hard choices. We must have a clear set of goals and objectives—and a strong, state-of-the-art space infrastructure.

As to our goals, I believe the Congress and the Administration must commit to a permanently manned space station.

I realize there has been a lot of discussion lately about the reduction to the HUD-Independent Agencies Appropriations Bill and the fact that Senator Proxmire intends to kill the space station program. I intend to openly and actively oppose that effort.

I believe that this Nation, this Administration, and this Congress must commit the necessary resources to the space station program and that this Nation must take the next logical step. I for one, believe that the United States has the capacity within a trillion dollar annual federal budget to allocate $2.5 billion a year for the next 8 years to build the Block I space station that has been proposed by NASA and reviewed inside out by the Seamans Space Station Committee of the National Research Council.

In my opinion, the space station is critical to continued U.S. leadership in space; and any effort to kill this program is shortsighted. Our leading adversaries have afforded seven successive space stations and have one orbiting above our heads today—despite the fact that the Soviet economy has less than half the output of the United States.

It's about time that we start to assess the space station program from more than its costs and challenges but as a visible demonstration of American technology and operational prowess in space and a commitment to sustained U.S. leadership in space.

The space station would give the Nation the ability to explore regions of the universe never explored by man. It would serve as a laboratory where we can learn to adapt to another more hostile environment and where the knowledge required to improve life on Earth and advanced technology and research can be acquired. Not only would the space station let us look out into the universe, but it also would let us come to better know and understand our planet Earth as suggested in the Ride Report. It would provide a vital new chapter in international cooperation in space.

I heard the report yesterday on the radio, as many of you did, that indicated that the National Research Council determined that the Block I space station proposal would cost 30% more than the Council's June estimate. Certainly there is significance in any report that indicates that the potential cost and risks of the space station are higher than formerly perceived. However, the truth of the matter is that the National Research Council said that the cost increase could be in the range of $0 to $3.9 billion, or in the range of 1% to 30%.

Now, I would hope that when the Council's report is issued on Monday that everybody does not use that report to take more pot shots at the space station program or at NASA. Rather, I would hope that we use the report to refine and tighten our space station planning and our overall space program, and to make the decision to move forward in a deliberate and predictable manner. It's time for the U.S. to tell the world that we will not surrender our leadership in space—not to the Russians, the French, the Japanese or to a paralysis of our national will or an inability to make difficult policy decisions.

In the last four years, there has never been a single vote on the space station program during consideration of a Senate or House Authorization or Appropriations Bill. I am hopeful that the Proxmire proposal to kill the space station will result in a vote so strong for the space station that its future success will be ensured. To do that, I will need your help, and we will need the help of the American public.

Secondly, let me talk about an issue that goes straight to the concerns and efforts of each and every person in this room—space transportation.

It might surprise some of you to know that the National Research Council Space Station Report is rumored to have more discussion of the Nation's space transportation system and our future options than discussion of space station costs.

On the hard question of alternative lift vehicles for the future, there are legitimate questions and differences of opinion of the best route to take. It strains the capacity of any single individual to evaluate the technical, competitive merits of an enhance shuttle, a shuttle-derived vehicle or shuttle cargo carrier, or an advanced launch system. But those of us in Congress can clearly see that the space transportation infrastructure of this Nation is not adequate for the civil and military requirements that we have to meet. That condition is unacceptable, and it must be resolved immediately.

We in Congress can also see a variety of different agencies working for their own interest but not necessarily in the best interest of our overall national mission.

However the debate turns, the time has come to make some hard decisions about the space transportation infrastructure of this Nation and what additional capabilities are required to meet existing and future payload requirements.

I can remember in the fall of 1985 before the space shuttle Challenger disaster when Pete Aldridge was trying to market the Titan II and Titan IV programs on the Hill. I doubt many of you can even remember the Complementary Expandable Launch Vehicle. It was a hard battle for Pete Aldridge, but the message he delivered was quite simple. "This program is in the national interest. We cannot afford, from an economic or national security point of view to rely solely upon the space shuttle—a man-rated vehicle."

History has shown us that Secretary Aldridge was right. More importantly, his message was right. The economic and national security of this Nation does require a robust and diversified space transportation system with both manned and unmanned vehicles.

For some reason that same message has not yet gotten across to everyone engaged in today's debate about the space transportation requirements of this Nation. But the message is more profound today than it was in the fall of 1985. This Nation does need a more robust and balanced fleet. It needs space shuttles, it needs Titans, it needs Deltas, it needs Atlas Centaurs, it needs AmRocs. But it also needs an interim heavy lift launch vehicle to assist with the deployment of the space station and a long-term heavy lift launch vehicle to meet the transportation requirements of the late 1990's and beyond. These multiple needs must be cross-connected and rationalized to give us a cost-effective and efficient mix. We can't afford bureaucratic squabbling and selfishness. We need a unified, cooperative effort that puts everyone on the same team—working toward common goals.

When the U.S. hockey team beat the Russians in the Olympics, they did it with teamwork. NASA, the Air Force, the administration and Congress, the contractors and the public have to get together behind an overall strategy and make it work.

Now, I know that there is a very strong heritage at the Marshall Space Flight Center in the space transportation sector. I also know that the Air Force is anxious to have its own capability so that the national security will never again rely upon a single, man-rated vehicle like the shuttle. But I find a certain conflict in the goals of the NASA and Air Force space transportation programs.

NASA with good reason would like to maximize the Nation's investment in the space shuttle and space shuttle technology. Not surprisingly, shuttle-derived vehicles have been on the drawing board for quite some time. However, it might just be the case that an enhanced shuttle with an advanced solid rocket motor might be just as good an option in the near term. If that were the case, NASA would be freed up to start designing Shuttle II or the man-rated successor to the current space shuttle fleet.

The Air Force on the other hand, seems committed to an Advanced Launch System or an ALS by the late 1990s. And who wouldn't be committed to a vehicle that might reduce the cost per pound to space by a factor of ten. This would have significant consequences for the scope and direction of the Nation's future military space program and defense systems. However, the Air Force also seems committed to distancing itself from space shuttle technology. Therefore, we are told that there is an interim Advanced Launch System that could be available in the 1993-94 time frame and that could reduce the cost of space transportation by a factor of three and would incorporate advanced technologies. Members of Congress with space oversight duties do not possess the technical skill to wisely referee these highly technical decisions. But we can expect and require the best technical minds available to crack this impasse and make a sensible and workable recommendation to us. So don't be surprised when you read the National Research Council Space Station Report and see some very telling comments about the merits of each of these respective proposals—the NASA proposals and the Air Force proposals.

As I indicated earlier, I hope that the space station recommendations of the National Research Council result in positive actions. I also hope the recommendations concerning space transportation do not further divide the various parties, NASA and DOD. I hope that the report will help us do what we should have done already—make some selections among the various and sundry space transportation options and put this Nation in a position where future space transportation debates will not focus on "is there an adequate space transportation infrastructure" but "what vehicle in our existing fleet is the best suited for the successful and most cost-effective completion of that mission."

In the next session of the 100th Congress, I hope that I will be able to work with both NASA and the Air Force to clearly resolve these issues so we can move forward. I hope that we can make the hard choices, make the necessary commitments, select those systems that are best suited to our future space transportation requirements and that will best serve the national interest. Yes, there will be winners and losers; but fair, tough competition strengthens everyone—and ultimately, we will all be winners.

Finally, I would like to address an area that those of you who have heard me speak know I am deeply concerned about—that is the existing space policymaking apparatus.

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A lot has happened in Washington in the last few months. One of the best things to happen for the space program so far is the appointment of Frank Carlucci as the National Security Advisor.

For too long, the Senior Interagency Group on Space that is under the direction of the National Security Council has been a bureaucratic nightmare. Recently, there have been some very real efforts to improve that process and to improve the space policymaking apparatus. The staff of the NRC is currently reevaluating the Administration's space policy and the space policymaking process. We are all deeply interested in this activity and think it is time that space policy be formulated on the basis of national interests and not agency interests. I also think it is time that we consider that we want to do as much as what we want to say. For too long we have been developing space policies that could not be implemented.

As all of you probably know, I strongly believe we should reestablish the National Space Council under the executive direction of the Vice President of the United States. We need a clear command structure that will elevate and illuminate the importance of the U.S. role in space. We need to get the debate, the decisions, and our space goals out in the open. The space program needs that standing and visibility if it is to maintain public support and earn its needed share of scarce national resources.

The Congress last year acted to reestablish the National Space Council, and the Administration objected and vetoed the authorization bill. The Space Council has been reenacted in this year's Senate bill, and we are facing the same veto threat. We are dealing with that question and others in the Senate/House conference now.

Over the course of the last few months, representatives of different Federal agencies have approached me and my staff to indicate that they agree that the space policy process isn't working properly, but do not favor a return to the Space Council.

I hope that in the very near future, the Congress and the various agencies in the Executive Branch can come to a meeting of the minds as the best possible space policymaking apparatus. I have made the offer before, and I will repeat it today. If the Administration has a better solution that they can implement administratively, I will support that effort. If they have a better solution that they can implement legislatively, I will introduce the bill for them. The Paine Commission and the Ride Report, in a sense, underscore the policy drift that has been occurring. These important studies are no substitute for an efficient, everyday policy mechanism that can make key decisions on a timely basis and move us forward.

We must have an adequate space policymaking apparatus. We need to be able to decide if we want to build a space station, what type of space transportation systems to build, what goals of the Paine Commission or the Ride Report we should implement, and what recommendations of the National Research Council on Space Station we should implement.

It is the duty of the Administration and the Congress to formulate a space program and space policies that are so well conceived that a strong national consensus can sustain our efforts as the U.S. space effort contributes a vital part to the economic and military security of our nation.

Space programs and space policies must never be crafted for a single Administration. Space programs and space polices need continuity that carries us forward over the decades, firing the national spirit and earning the continuing commitment of the American people.

I appreciate the opportunity to speak with you today and to have the opportunity to work wtih you to formulate a reasonable, rational, and pragmatic space policy and space program. I deeply admire the work you do and your dedication to this area of extraordinary national effort.

If we work together, we can keep America in its pioneering role in space—as we have only really just started the process of unlocking the secrets of the universe and taking man out to the furthest reaches of the heavens.

We are making progress, and I feel the momentum building in NASA day by day.

The recent success of the space shuttle solid rocket booster test, the recent announcement that DOD will procure 2 additional Titan IVs, the recent signing of a new space shuttle contract by NASA and Rockwell, of commercial customers by Martin Marietta and McDonnell Douglas, all point to the forward movement of the U.S. space program—civil and military.

For nearly twenty-five years, the United States enjoyed a Golden Age in space and space exploration, much of it produced by people in this community and many of you in this room today. We have done much for which we can be proud. Imagine a 25-year record where not a single life was lost on an operational mission.

We should conclude this meeting today with an iron commitment to ourselves and each other—that we will produce space results over the next 25 years every bit as daring and important as our past achievements.

Make no mistake about it, the U.S. space program is alive and well. While we are sorting out our precise goals for the future—an often frustrating process—that debate and list of options is a sign of strength, purpose, and commitment. We will hammer out these decisions and go on to build the U.S. space future with all the skill and determination our nation can command—and with you in Huntsville leading that effort.

AGENT ORANGE UPDATE

Mr. CRANSTON. Mr. President, my distinguished colleague, the ranking minority member of the Committee on Veterans' Affairs, the Senator from Alaska [Mr. MURKOWSKI], yesterday introduced a bill, S. 1697, to provide a presumption of service connection for Vietnam veterans suffering from non-Hodgkin's lymphoma [NHL].

I agree with Senator MURKOWSKI that serious questions have been raised regarding veterans' exposure in Vietnam to agent orange and its highly toxic contaminant, dioxin. Indeed, these questions have long been of serious concern to me and many of my colleagues. Accordingly, a major focus of my efforts and those of the Committee on Veterans' Affairs in both Houses has been on research which might eventually lead to a greater understanding of the health effects of agent orange exposure and how best to address the special needs of those veterans who may have been exposed to this herbicide.

Based on the best available science at this time, I do not think that the answers to these questions have been found, or that an association between agent orange exposure in Vietnam and non-Hodgkin's lymphoma has been demonstrated. The questions which have been raised about the health effects of agent orange are scientific ones, which require scientific research and analysis. They are not susceptible to quick and easy answers. Rather, meaningful answers must be found, not just for purposes of providing compensation but so that we can know the full extend of any threat which may exist to the health of our Vietnam veterans. Major studies are well underway at this time—in addition to research carried out by the Veterans' Administration [VA], the Centers for Disease Control [CDC] is conducting three studies on the health of Vietnam veterans pursuant to congressional mandate, the status of which I will now outline.

Mr. President, at this time I would like to review the major scientific evidence regarding a possible association between agent orange exposure in Vietnam and NHL.

CDC EPIDEMIOLOGICAL STUDIES

In 1979, through legislation which I authored—enacted in the Veterans' Health Programs Extension and Improvement Act of 1979, Public Law 96-151—Congress mandated that the VA conduct an epidemiological study of the possible health effects of exposure to herbicides and dioxin—a highly toxic contaminant of agent orange—on veterans who served in Vietnam. The scope of that study was expanded in 1981, through legislation which I introduced—enacted in the Veterans' Health Care, Training, and Small Business Loan Act of 1981, Public Law 97-72—to authorize the inclusion of an evaluation of the impact on the health of Vietnam veterans of other environmental factors which may have occurred in Vietnam. In 1983, as I had urged for more than 3 years, the CDC took over responsibility for this study. Public Law 96-151, in order to provide assurance that the study would be designed and carried out in a fully appropriate and acceptable manner, requires that, before the study will begin, the Office of Technology Assessment [OTA] will have to approve the protocol and thereafter monitor the conduct of the study.

The CDC is conducting the epidemiological study of the health of Vietnam veterans in 3 components. The CDC's protocols for these studies were extensively reviewed in accordance with scientific peer-review criteria and were approved by both the OTA and the Science Panel of the Cabinet Council's Agent Orange Working Group [AOWG]. The first component, the Vietnam Experience Study

["VES"], is a three-part effort designed to demonstrate whether or not there is any difference in the health of veterans of the Vietnam era who served in Vietnam compared to the health of veterans who served elsewhere during the same period of time. The second component of the CDC effort, the agent orange study, is designed to determine whether troops who were exposed to that herbicide during service in Vietnam have suffered long-term adverse health effects as a result of that exposure. The third component, the selected cancers study, is designed to determine whether there is an increase among Vietnam veterans in the incidence of several serious, but relatively rare, cancers—including NHL—which have in some studies been suggested to be linked to dioxin exposure.

Vietnam experience study. The VES has three parts: A mortality study; detailed health interviews; and comprehensive medical, psychological and laboratory evaluations of veterans. In January 1987, the CDC released the results from the first VES part—an analysis of postservice mortality of over 18,000 Vietnam era veterans. No increase in the number of deaths from NHL for Vietnam veterans was found. The CDC did find an excess of deaths—primarily due to external causes such as motor vehicle accidents and suicides—in the first 5 years after service. However, after that period, except for drug-related deaths, the study found no increase in the death rate for Vietnam veterans as compared to their veteran counterparts who did not serve in Vietnam—including no increase for deaths from NHL.

Although the mortality study comprises only one of the three areas of research being conducted in the VES and its results thus do not provide the final results from the VES, it is nevertheless significant that no increase in deaths from NHL was found. When the final report from the VES is released—which I understand is expected in stages, to begin at the end of this year—I will examine it carefully for any additional information regarding whether Vietnam veterans, as a consequence of their exposure to agent orange or of some other factor, are suffering from an increase in NHL or any other health problem.

Agent orange study. The CDC's agent orange study had been stalled since January 1986, pending the outcome of efforts to determine if assumptions about a veteran's exposure to agent orange for purposes of assigning the veteran to a particular study cohort can be validated on the basis of a review of military records. However, during late 1986, the CDC refined a methodology for detecting residuals of dioxin in blood samples which, it was believed, could be used to validate a very intricate exposure-measuring methodology, developed by the defense Department in consultation with CDC, based on military records. This blood-testing method of determining dioxin exposure has also been validated and used successfully in other studies, including studies of civilians with known exposures to dioxin.

The CDC serological study found, in preliminary results published in July 1987, no significant dioxin exposure among the Vietnam veterans studied regardless of whether their military records indicated high, intermediate, or low dioxin exposure; moreover, all of the Vietnam veteran participants, with one exception, had dioxin levels well below the upper limit for U.S. residents without known dioxin exposure.

Whether the CDC results indicate that, by and large, Vietnam veterans were not exposed to significant amounts of dioxin, or whether they merely show that exposure cannot be determined from military records remains unclear. Both the OTA and the AOWG are currently evaluating the CDC findings. The OTA, at a meeting in August of its Agent Orange Panel, preliminarily indicated that the CDC blood dioxin study appears to have been properly conducted and to be scientifically valid.

Of course, the CDC results do not directly address the issue of a possible association between NHL and agent orange exposure. However, they do raise questions about the amount of exposure Vietnam veterans may actually have received.

The CDC and the White House Domestic Policy Council will be determining in the next few months whether the agent orange exposure study, at least as originally envisioned, can be carried out, and the OTA will be reviewing their determinations. The Veterans' Affairs Committee will be very closely monitoring these activities, and I plan to hold a hearing in the next several months, on the status of agent orange study.

The selected cancer study is underway at this time. The CDC is still in the process of data collection, and results are expected in early 1989.

RANCH HAND STUDY

In 1979, the Air Force began an epidemiological study of ranch hand personnel, the former Air Force pilots who flew the planes which sprayed agent orange in Vietnam, to determine whether these veterans suffered adverse health effects from herbicide exposure. In this study, the health of these veterans is being compared with that of Vietnam veteran counterparts who were not exposed to herbicides. The ranch hand veterans clearly received significant amounts of agent orange exposure, probably the highest of any group of Vietnam veterans. Four mortality reports have been released thus far—the most recent in January 1987—and all of them indicate that the ranch hand personnel as a group have not suffered adverse health effects from their exposure to agent orange. None of the four reports demonstrate any health effects which can be conclusively attributed to dioxin exposure—and none of them suggest any link between such explosure and NHL.

VA MORTALITY STUDY

The VA recently completed a proportionate mortality study of Army and Marine Corps Vietnam veterans. The VA compared causes of death among 24,235 such veterans with that among 25,685 non-Vietnam veterans. Among the Marine Corps Vietnam veterans—who comprised approximately one-fifth of the study subjects—there was a statistically significant two-fold increase of NHL. Among the Army veterans, who comprised about 80 percent of those studied, there was no increase, indeed there was a deficit—which was not statistically significant—of deaths from NHL. As to all cancers and as to deaths in general, there was no marked difference between causes of death among the Vietnam veterans as compared to the non-Vietnam veterans.

The VA study certainly supports the suggestion in several studies of a link between NHL and dioxin exposure, and I, along with the chairman of the House Veterans' Affairs Committee, Mr. MONTGOMERY, already have written to the OTA, the AOWG, and the VA Advisory Committee on Environmental Hazards, requesting that each evaluate the study. I think that such review by independent scientific entities—including OTA, whose primary mandate is to provide scientific analysis to the Congress—is essential before we can properly evaluate the impact of any scientific study and determine what, if any, legislative response may be appropriate.

Moreover, I believe that such independent review is particularly necessary in the case of this VA study, because I understand that—contrary to standard procedure in a scientific study of this magnitude—its protocol was never submitted to peer review, and because it has been rejected for publication in a scientific journal and remains unpublished at this time. Publication in a reputable scientific journal carries with it clearance through a peer-review process designed to confirm scientific validity. The VA's Advisory Committee expects to meet and discuss the study in October.

It may well be that the VA study is scientifically valid, but to proceed without benefit of review by outside scientific entities would seem to be very unwise. The VA itself needs to examine additional questions which have been raised by the study including, for example, the health status of Army

Vietnam veterans who served in "I" Corps, the area in Vietnam where the majority of the Marine veterans served. As to "I" Corps, my understanding is that in terms of agent orange spray intensity in Vietnam, 2,250,430 gallons were sprayed there but that the greatest intensity of spray was in the "III" Corps where 5,255,938 gallons were sprayed.

Mr. President, at this time I would like to note that, contrary to recent assertions, I know of no evidence indicating that the results of this VA study were suppressed. Rather, my understanding is that the VA has been unsuccessfully trying to get the study accepted for scientific publication and that once it is made public it is no longer eligible for scientific publication. Apparently, the report from the study has been rejected for publication by one journal, the Journal of the American Medical Association, and the VA is awaiting a decision as to whether another journal will accept it.

NON-VETERAN HERBICIDE STUDIES

In addition to studies of the effects of dioxin exposure on Vietnam veterans, other independent studies have examined the effects of herbicide exposure on agricultural, forestry, and industrial workers exposed occupationally. Some of these studies have found some excesses of NHL among exposed workers. Studies conducted in Sweden by L. Hardell and others on the effect of years of occupational exposure to phenoxy herbicides, including in some cases compounds containing dioxin, have been inconsistent with respect to finding an association between such exposure and NHL. Certain of these studies have found fivefold to sixfold increases in NHL. However, others of these studies have not found an increase. A similar study conducted in New Zealand has found no link at all between NHL and herbicide exposure.

In September 1986, the results of a study entitled "Agricultural Herbicide Use and Risk of Lymphoma and Soft-Tissue Sarcoma" ("Kansas Study"), conducted by the National Cancer Institute and the University of Kansas, were published. This study examined the effect of exposure to certain herbicides—which, almost exclusively, were not contaminated with dioxin—through agricultural use, including any relationship with NHL. The components of some of the herbicides were also present in agent orange.

The report of the Kansas Study found a significant increase of NHL among the agricultural workers. At my request, the OTA and the AOWG reviewed this study. As is described more fully in my statement in the CONGRESSIONAL RECORD on February 7, 1987 (page S1769), both the OTA and the AOWG raised significant questions about the significance of the Kansas study results as far as Vietnam veterans were concerned. Concerns were expressed regarding the small number of cases on which the NHL findings were based. More importantly, both entities noted that almost all of the herbicide exposure evaluated in the study consisted of exposure to 2,4-dichlorophenoxyacetic acid ("2,4-D"), rather than to dioxin. Although 2,4-D is one of the components of agent orange, because it does not persist in the environment substantial exposure in Vietnam would have required either direct contact with agent orange or exposure very shortly after spraying. Accordingly, as OTA observed, few Vietnam veterans would have been exposed to 2,4-D, and the results of the Kansas study do "not provide strong support for attributing the occurrence of non-Hodgkin's lymphomas in Vietnam veterans to agent orange".

Another recent study on this issue—entitled "Soft Tissue Sarcoma and Non-Hodgkins Lymphoma in Relation to Phenoxy Herbicide and Chlorinated Phenol Exposure in Western Washington" which was published in the May 1987 issue of the Journal of the National Cancer Institute—sought to "investigate the relationship between the incidence of soft tissue sarcomas and NHL and past exposure to phenoxy herbicide and chlorinated phenol using a population-based case-control approach." This study found "small but significantly increased risks for developing NHL in association with some occupational activities involving exposure to phenoxy herbicides, particularly for prolonged periods, and possibly, in combination with other chemicals." The study did not demonstrate "a positive association between increased cancer risks and exposure to any specific phenoxy herbicide product alone."

Mr. President, the Senate and House Veterans' Affairs Committees have asked OTA, the AOWG, and the VA Advisory Group to review this study and provide their views on it and its relevance to issues relating to Vietnam veterans.

Finally, it is very important to keep in mind in evaluating the evidence regarding a possible link between dioxin exposure and NHL that the group of Vietnam veterans who likely had the heaviest dioxin exposure—and therefore would be the likeliest group to experience an increase in dioxin-related diseases—the ranch hand veterans, has not shown an excess of NHL above its non-Vietnam-veteran counterparts and that the CDC mortality study showed no excess in NHL deaths among Vietnam veterans above their non-Vietnam-veteran counterparts.

CONCLUSION

I recognize that the issue of veterans' exposure to agent orange through their service in Vietnam is an emotional and divisive one for many Vietnam veterans, as well as for their families and others. That is why we have required that the results of the CDC's blood dioxin analysis and of the VA's recent mortality study be reviewed by three independent scientific entities. It would be ironic—and, I think, irresponsible—if the Congress, after working for so many years to mandate epidemiological studies of Vietnam veterans, and after over $50 million has been spent on them, were now to act on the basis of limited and disputed scientific knowledge, when the results from the CDC VES study and the evaluation of the results from the VA study are expected to be available in only a few months.

Mr. President, I do not believe that this is an appropriate time for legislative action to establish presumptions of service connection for certain diseases occurring in Vietnam veterans. Rather, we must focus more closely on the efforts underway to find answers to those questions. To that end, once we have received the decision of the executive branch, through the AOWG and the Domestic Policy Council, regarding the CDC agent orange study, and the evaluations of the VA mortality study from the three bodies we have requested to make such evaluations, I plan to schedule hearings of the Veterans' Affairs Committee on the agent orange issue.

In the meantime, the committee is moving forward with the legislation mandating a review by the National Academy of Sciences [NAS] of all the scientific literature, evidence, and studies pertaining to the human health effects of exposure to agent orange, as provided in S. 1510, introduced by the Senator from Massachusetts [Mr. KERRY] and myself and approved by our committee on July 31, as part of S. 9. I hope to bring S. 9 before the Senate later this month or next.

Mr. President, the evidence associating non-Hodgkin's lymphoma with exposure to agent orange is suggestive at best. Substantial additional scientific information is expected in the next few months, including the evaluations of the VA mortality study and the Washington study and a decision on the CDC agent orange study. I do not believe that we can justify prematurely proceeding with the enactment of piecemeal legislation to benefit only a very small number of the Vietnam veterans who believe they suffer from agent orange-related diseases. I do not think that an association between agent orange and NHL must be established beyond a reasonable doubt; but when there is no indication that conclusive scientific answers cannot be found, action establishing a presumptive connection while pertinent studies are ongoing must surely have a strong basis in valid and accepted scientific evidence. Should that evidence be found, I will lead the way to the enact-

ment of legislation to provide compensation for those veterans who are entitled to it.

Mr. President, I have been in close communication regarding the agent orange issue with my counterpart in the other body, House Veterans' Affairs Committee Chairman G.V. "SONNY" MONTGOMERY. I am confident that he and I share a commitment to doing what is right for Vietnam veterans on this issue and we and our ranking minority members, Senator FRANK MURKOWSKI and Representative GERALD SOLOMON, and our two committees will be working closely together in the days and months ahead as we continue to grapple with this very complicated, divisive, intensely felt, vitally important issue.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Emery, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

ANNUAL REPORT OF THE REHABILITATION SERVICES ADMINISTRATION—MESSAGE FROM THE PRESIDENT—PM 66

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

In accordance with Section 13 of the Rehabilitation Act of 1973, as amended, I am pleased to transmit the annual report of the Rehabilitation Services Administration. The report, prepared by the Department of Education, covers activities supported under the Act in Fiscal Year 1986.

RONALD REAGAN.

THE WHITE HOUSE, *September 18, 1987.*

MESSAGES FROM THE HOUSE

At 2:42 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House had passed the following bills, in which it requests the concurrence of the Senate:

H.R. 442. An act to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians; and

H.R. 3289. An act to amend the Export-Import Bank Act of 1945.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 3289. An act to amend the Export-Import Bank Act of 1945.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HATCH:

S. 1701. A bill to improve the administration and enhance the utility of the National Assessment of Educational Progress; to the Committee on Labor and Human Resources.

By Mr. NICKLES:

S. 1702. A bill to provide that any requirement to substantiate a deduction under the Internal Revenue Code of 1986 for business use of a vehicle be based on the regulations in effect before the Tax Reform Act of 1984; to the Committee on Finance.

By Mr. EVANS (for himself, Mr. INOUYE, Mr. MCCAIN, Mr. BURDICK, Mr. DECONCINI, Mr. MURKOWSKI, Mr. DASCHLE, Mr. DOMENICI, Mr. HATFIELD, Mr. PACKWOOD, Mr. COCHRAN, Mr. HECHT, and Mr. BINGAMAN):

S. 1703. A bill to amend the Indian Self-Determination and Education Assistance Act and for other purposes; to the Select Committee on Indian Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE (for himself, Mr. MELCHER, Mr. GRASSLEY, Mr. DURENBERGER, Mr. COCHRAN, Mr. BAUCUS, Mr. NICKLES, Mr. BOSCHWITZ, Mr. HEFLIN, Mr. KARNES, Mr. PRYOR, Mr. MCCLURE, Mr. EXON, and Mr. BENTSEN):

S. Res. 284. Resolution to express the sense of the Senate that the Secretary of Agriculture should make advance deficiency payments for the 1988 crop of wheat, feed grains, upland cotton, and rice, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATCH:

S. 1701. A bill to improve the administration and enhance the utility of the "National Assessment of Educational Progress," to the Committee on Labor and Human Resources.

NATIONAL ASSESSMENT OF NATIONAL ASSESSMENT OF EDUCATION PROGRAMS

Mr. HATCH. Mr. President, I am pleased to introduce the "National Assessment of Educational Progress Amendments of 1987." When enacted, this program will be a major tool of the educational reform movement in the United States and will also help our country to become more competitive on the international scene. I applaud the Department of Education for the work which it has done at the urging and in cooperation with the Governors of many States and concerned, forward-looking educators throughout this Nation. They have produced an efficient and direct tool by which the Federal Government can properly assist those who wish to improve the quality of education across this Nation.

Educational reform is impossible without a knowledge of what our schools are teaching, of what our children learn and do not learn. As a result of the enactment of this legislation, the current National Assessment of Educational Progress Program of testing the academic skills of school children will be expanded. Objective, comparable information about student performance in an expanded menu of academic subjects will be measured and publicly reported. With that information, parents will be better able to evaluate how well schools are doing in educating their children and thus to work together with local and State educators and other public officials further to improve the schools in their communities.

The children of our Nation will, of course, be the primary direct beneficiaries of this educational improvement. But all of us as a nation will benefit as well. Many of the subjects now to be tested, and thus improved, as a result of NAEP's expansion are the subjects where our children are woefully behind students in other countries. Enhancing the capabilities of our children in these areas will lead to a more skilled and productive work force and enhance our competitiveness on the international scene.

Mr. President, this is a short statement of the clearly foreseeable results of a very short but very important legislative proposal. I look forward to working with my colleagues to ensure its speedy enactment.

Mr. President, I ask unanimous consent that a section-by-section analysis of the bill be printed in the RECORD.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS AMENDMENTS OF 1987—SECTION-BY-SECTION ANALYSIS

Section 2. Section 2 of the bill would explain the purpose of the Act as the improvement of our Nation's schools by making objective information about student performance in an expanded variety of learning areas available to policymakers at the national, state, and local levels. Such information would be both representative and comparable and maintained in a manner that

ensures the privacy of individual students and their families. Section 2 would also clarify that the Act is not intended to authorize the collection or reporting of information about student attitudes or beliefs or on other matters that are not germane to the acquisition and analysis of information about academic achievement.

Section 3. Section 3 of the bill would comprehensively revise the Secretary's authority to administer the National Assessment of Educational Progress and transfer that revised authority from section 405 of the General Education Provisions Act (GEPA), dealing generally with the activities of the Office of Educational Research and Improvement, to section 406 of GEPA, dealing specifically with the activities of the Center for Education Statistics.

As amended, section 406(h) of GEPA would require the Secretary to carry out the National Assessment through a grant, contract, or cooperative agreement with an organization experienced in educational testing. The National Assessment would have as its purpose the assessment of the performance of children and young adults in the basic skills of reading, mathematics, communications, and other subjects and skills. The Assessment would provide a fair and accurate presentation of educational achievement in skills, abilities, and knowledge in reading, writing, mathematics, science, history, geography, civics, and literacy. Sampling techniques that produce data that are representative on both a national and State basis would be used. In addition, the National Assessment would collect and report data on a periodic basis (at least every two years for reading and mathematics, and at least every four years for writing and science); collect and report data every two years on students at ages 9, 13, and 17 and in grades 4, 8, and 12; assess and report every four years upon the literacy achievement of a nationally representative sample of out-of-school 17 year-olds and adults; report achievement data in a manner that facilitates valid State-by-State comparisons; and include information on special groups and students attending non-public schools, as well as special assessments of achievement in other educational areas as needed. The National Assessment would also provide technical assistance to States, localities, and others that desire to expand it to yield additional information, but would not collect any data that are not directly related to the appraisal of educational performance and achievement or the fair and accurate presentation of such information. With certain exceptions relating to personally identifiable information about students, their educational performance, and their families, and cognitive questions the Secretary intends to re-use, the public would be ensured access to all National Assessment data, questions, and test instruments.

The National Assessment would be conducted with the benefit of the expert, nonpartisan, and independent advice and recommendations of the Education Assessment Council. The Council would consist of the Assistant Secretary for Educational Research and Improvement (who would be the only Federal employee) and 20 other members appointed by the Secretary with due regard to their qualifications, experience, and diversity of perspective, including: two Governors (who may not be members of the same political party); two State legislators (who also may not be members of the same political party); one chief State school officer; one superintendent of a local educational agency; one member of a State board of education; one member of a local board of education; one classroom teacher; one representative of business or industry; one curriculum planner or supervisor; one testing and measurement expert; one non-public school administrator or policymaker; two school principals; one education researcher; and four additional members, who are not professional educators, including parents. The Secretary would be responsible for ensuring that the membership of the Council is balanced fairly in terms of the points of view represented and that it exercises its independent judgment, free from inappropriate influences and special interests. Members of the Council would serve terms not to exceed four years and the Secretary would appoint the initial members from among nominees furnished by Governors, chief State school officers, education associations and organizations, the National Academy of Sciences, parent organizations, learned societies, and other interested parties. Subsequent vacancies would be filled by the Secretary from nominees submitted by the Council. The breadth of interests and perspectives represented on the Council would enable it to articulate a national perspective on matters and issues affecting the conduct of the National Assessment.

The purpose of the Council would be to advise the Secretary on an on-going basis with respect to all aspects of the National Assessment, including the selection of subject areas to be assessed; the identification of achievement goals for each age and grade in each subject area tested; the development of objectives and test specifications; the design of assessment methodology; the development of guidelines and standards for analysis plans and for reporting and disseminating results; the development of standards and procedures for interstate and national comparisons; and the actions needed to improve the form and use of the National Assessment. The Secretary would be required to give careful consideration to the view of the Council and supply it with a written explanation if the Secretary departed from its written advice or recommendations.

In the past, the Federal Government has borne the full cost of the National Assessment. However, in light of the proposed major expansion in the National Assessment's data collection efforts to include State representative data, some cost-sharing is appropriate. Accordingly, the bill would require the Secretary to pay the full cost of administering National Assessment tests to the national sample of students and adults, but require cost-sharing among the governments involved for the administration of tests designed to generate data that are representative on a State basis. This flexible cost-sharing arrangement would permit States and other levels of government to satisfy their responsibilities through the use of in-kind contributions.

As in the past, participation in the National Assessment by State and local educational agencies and non-public schools would be voluntary.

Section 4. Section 4 of the bill would provide that the bill would take effect October 1, 1988.

By Mr. NICKLES:

S. 1702. A bill to provide that any requirement to substantiate a deduction under the Internal Revenue Code of 1986 for business use of a vehicle be based on the regulations in effect before the Tax Reform Act of 1984; to the Committee on Finance.

RECORD KEEPING FOR BUSINESS USE OF A VEHICLE

● Mr. NICKLES. Mr. President, today I am introducing legislation which will end, once and for all, the IRS stonewalling regarding the use of contemporaneous recordkeeping for the business use of a personal vehicle.

Under the provisions of the Tax Reform Act of 1984, taxpayers were required to keep contemporaneous records of the business use of their personal vehicles. Because of public pressure about this provision, Congress passed a repeal of the measure with the intent that the IRS would go back to using the regulations regarding automobile recordkeeping that were in effect before the 1984 act.

Unfortunately, the IRS has continued to require that the substantiation of deductions for the business use of a personal vehicle take the form of contemporaneous records.

This requirement is a costly and intrusive burden into the lives of millions of Americans. My bill prevents the IRS from requiring the use of contemporanous records to substantiate deductions for the business use of a person's own private automobile. In addition, my legislation forces the IRS to begin using the regulations which were in effect prior to the passage of the 1984 act that allowed a taxpayer to substantiate expenditures by adequate records or by sufficient evidence corraborating his own statement.

It is my hope that the Senate will pass this bill.●

By Mr. EVANS (for himself, Mr. INOUYE, Mr. MCCAIN, Mr. BURDICK, Mr. DECONCINI, Mr. MURKOWSKI, Mr. DASCHLE, Mr. DOMENICI, Mr. HATFIELD, Mr. PACKWOOD, Mr. COCHRAN, Mr. HECHT, and Mr. BINGAMAN):

S. 1703. A bill to amend the Indian Self-Determination and Education Assistance Act, and for other purposes; to the Select Committee on Indian Affairs.

INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT AMENDMENTS

Mr. EVANS. Mr. President, today I am introducing the Indian Self-Determination Act Amendments of 1987. The Self-Determination Act, signed into law on January 4, 1975 by President Gerald Ford, has provided the statutory basis for tribal contracting with the U.S. Government for the last 12 years.

Mr. President, the Indian Self-Determination Act embodies the historic policy of "Indian self-determination without termination" first enunciated by President Richard Nixon in his special message to Congress in 1970. A major tenant of the policy of self-de-

termination is that Indian tribes are viable units of local government capable of delivering services directly to their constituencies. The Indian Self-Determination Act established the right of Indian tribes to contract with the Secretary of Interior and the Secretary of Health and Human Services to operate programs otherwise operated by the Bureau of Indian Affairs and the Indian Health Service. The law transfers resources to the tribes to enable them to participate fully in the planning, management and delivery of services to Indian people.

Indian tribes have responded positively to this law. Since 1975, many tribes have gained valuable experience in operating and managing human services, economic development and natural resources programs. Currently, there are 1,400 contracts between the Bureau of Indian Affairs and Indian tribes, involving some $280 million, which is one-fourth of the total BIA budget.

Although the act has been, for the most part, a success, there have been problems. Federal procurement laws and Federal acquisition regulations have been inappropriately imposed on Indian self-determination contracts, resulting in burdensome and unnecessary reporting requirements. Federal agencies have failed to pay their fair share of indirect costs for self-determination contracts. This has resulted in many tribes subsidizing Federal contract administration costs, and foregoing opportunities for economic development. Federal agencies have passed Federal pay costs, retirement costs and computer equipment acquisition costs on to tribes, which has resulted in deteriorating budget levels for tribal programs. Tribes that have demonstrated program competence and sound management are required to annually submit voluminous recontracting applications.

The amendments I am introducing today are designed to respond to the concerns expressed by Indian tribal leaders. These amendments are designed to strengthen the policy of Indian self-determination while maintaining accountability for Federal funds.

Mr. President, the Indian Self-Determination Act is a declaration of our commitment to maintain the Federal Government's unique and continuing relationship with and responsibility to the Indian people. The act is intended to permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning and administration of those programs and services. This bill provides the necessary changes in the Indian Self-Determination Act to ensure its continued viability in the years to come.

Mr. President, I ask unanimous consent that a copy of the Indian Self-Determination Act Amendments of 1987, and a section-by-section analysis of the bill, be printed in the CONGRESSIONAL RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1703

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—ADMINISTRATIVE PROVISIONS

SEC. 101. SHORT TITLE AND TABLE OF CONTENTS

This Act may be referred to as the "Indian Self-Determination and Education Assistance Act Amendments of 1987".

TABLE OF CONTENTS

SEC. 102 DECLARATION OF POLICY

Section 3 of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, Act of January 4, 1975, 88 Stat. 2203, as amended) is further amended by striking existing subsection "(b)" and inserting the following new subsection "(b)" in lieu thereof:

"(b) The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to individual Indian tribs and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.".

SEC. 103. DEFINITIONS

Section 4 of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, Act of January 4, 1975, 88 Stat. 2203, as amended) is further amended—

(a) by adding the following new subsections (a), (b), (c) and (d):

"(a) 'construction programs' means programs for the planning, design, construction, repair, improvement, and expansion of buildings or facilities but not limited to, housing, sanitation, roads, schools, administration and health facilities, irrigation and agricultural works and water conservation, flood control, or port facilities;"

"(b) 'contract costs' means all direct and indirect costs which are necessary and reasonable for the proper and efficient administration of self-determination contracts;"

"(c) 'contract funding base' means the base level from which contract funding needs are determined, and includes all contract costs;"

"(d) 'direct program costs' means costs that can be identified specifically with a particular contract objective;";

(b) by redesignating existing subsections "(a)" and "(b)" as subsections "(e)" and "(f)" respectively;

(c) by adding the following new subsections (g), (h) and (i):

"(g) 'indirect costs' means costs incurred for a common or joint purpose benefiting more than one contract objective, or which are not readily assignable to the contract objectives specifically benefited without effort disproportionate to the results achieved: *Provided*, That indirect costs are determined by multiplying the amount of direct program costs by the indirect cost rate for such contract;"

"(h) 'indirect cost rate' means the rate arrived at through negotiation between an Indian tribe or tribal organization and the cognizant Federal agency;"

"(i) 'mature contract' means a self-determination contract that has been continuously operated by an Indian tribe or tribal organization for three or more years, and for which there are no significant and material audit exceptions in the annual financial audit of such Indian tribe or tribal organization;";

(d) by redesignating existing subsection "(c)" as subsection "(j)";

(e) by striking existing subsection "(d)" and by redesignating as subsection "(k)" and inserting the following new subsection in lieu thereof:

"(k) 'Secretary', unless otherwise designated, means either the Secretary of Health and Human Services or the Secretary of the Interior or both;";

(f) by adding the following new subsection "(l)":

"(l) 'self-determination contract' means an intergovernmental contract entered into pursuant to this Act between an Indian tribe or tribal organization and an agency of the United States for the purpose of assuring Indian participation in the planning, conduct and administration of programs or services which are otherwise provided to Indian tribes and their members pursuant to Federal law: *Provided*, That no intergovernmental contract shall be construed to be a procurement contract; and"; and

(g) by redesignating existing subsection "(f)" as subsection "(m)".

SEC. 104. REPORTING AND AUDIT REQUIREMENTS

Subsection (a) of section 5 of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, Act of January 4, 1975, 88 Stat. 2203, as amended) is further amended—

(a) by inserting after the words "as the appropriate Secretary shall prescribe," the following: "by regulations promulgated under the Administrative Procedure Act (Act of June 11, 1946, 60 Stat. 237, as amended), consistent with Section 102(d)(5) of this Act,"; and

(b) by changing the period at the end of the subsection to a colon and inserting the following provisio:

"Provided, however, That for the purposes of this subsection, such records for multi-year contracts shall consist of quarterly financial statements for the purpose of quarterly advance payments, the annual single-agency audit required by the Single Audit Act of 1984 (Public Law 98-502, Act of October 19, 1984, 98 Stat. 2327), and a brief annual program report.".

TITLE II—INDIAN SELF-DETERMINATION ACT AMENDMENTS

SEC. 201. SELF-DETERMINATION CONTRACTS

(a) Section 102 of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, Act of January 4, 1975, 88 Stat. 2203, as amended) is further amended to read as follows:

"SEC. 102. (a)(1) The Secretary is directed, upon the request of any Indian tribe or tribal organization, to enter into a self-determination contract or contracts with such Indian tribes or tribal organization to plan, conduct, and administer programs, including construction programs, or portions thereof—

"(i) provided for in the Act of April 16, 1934 (48 Stat. 596), as amended by this Act;

"(ii) any program or portion thereof which the Secretary is authorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208) and any Act subsequent thereto;

"(iii) any or all of the functions, authorities and responsibilities of the Secretary of Health and Human Services under the Act of August 5, 1954 (68 Stat. 674), as amended;

"(iv) any program or portion thereof, including construction programs, administered by the Secretary for the benefit of Indians for which appropriations are made to agencies other than the Department of Health and Human Services or the Department of the Interior; and

"(v) any program, or portion thereof, for the benefit of Indians without regard to the agency or office of the Department of Health and Human Services or the Department of the Interior within which it is performed.

"(2) Any Indian tribe or tribal organization may submit a proposal for a self-determination contract to the Secretary for review. The Secretary shall, within ninety days after receipt of a proposal for a self-determination contract, approve the proposal unless a specific finding is made that—

"(A) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;

"(B) adequate protection of trust resources is not assured; or

"(C) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract.

"(3) Indian tribes and tribal organizations shall be entitled to contract for any program or function operated by the federal government for the benefit of such tribe, as provided in this section.

"(4) Upon the request of any Indian tribe or tribal organization that operates two or more mature self-determination contracts, the Secretary is authorized to allow such Indian tribe or tribal organization to consolidate such contracts into one single contract.

"(b) Whenever the Secretary declines to enter into a self-determination contract or contracts pursuant to subsection (a) of this section, he or she shall (1) state his or her objections in writing to the Indian tribe or tribal organization within sixty days, (2) provide assistance to the Indian tribe or tribal organization to overcome his or her stated objections, and (3) provide the Indian tribe or tribal organization with a hearing, under such rules and regulations as he or she may promulgate, and the opportunity for appeal on the objections raised.

"(c)(1) The Secretary is authorized to require any Indian tribe or tribal organization requesting to enter into a self-determination contract pursuant to the provisions of this title to obtain adequate liability insurance: *Provided, however,* That, except for liability for interest prior to judgment or for punitive damages, each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

"(2)(A) For purposes of section 224 of the Public Health Service Act (42 U.S.C. 233(a)), and chapter 171 and section 1346 of title 28, United States Code, with respect to claims for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations, a tribal organization or Indian contractor carrying out a contract, grant agreement, or cooperative agreement under this section or section (104(b) of this Act, the Act of April 30, 1908 (35 Stat. 71; 25 U.S.C. 47) or section 23 of the Act of June 25, 1910 (36 Stat. 861; 25 U.S.C. 47) is deemed to be part of the Public Health Service of the Department of Health and Human Services while carrying out such contract or agreement and its employees (including those acting on behalf of the organization or contractor as provided in section 2671 of title 28) are deemed employees of the Service while acting within the scope of their employment in carrying out the contract or agreement.

"(B) Subparagraph (A) shall apply to an urban Indian organization, and to employees of an urban Indian organization, only with respect to services provided to Indians.".

(b) Section 103 of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, Act of January 4, 1975, 88 Stat. 2203, as amended) is hereby repealed.

SEC. 202. TECHNICAL ASSISTANCE AND GRANTS TO TRIBAL ORGANIZATIONS

Section 104 of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, Act of January 4, 1975, 88 Stat. 2203, as amended) is further amended—

(a) by redesignating such section as section "103"; and

(b) by adding the following new subsection (d) at the end thereof:

"(d) The Secretary is directed, upon the request of any Indian tribe or tribal organization, to provide technical assistance on a non-reimbursable basis to such Indian tribe or tribal organization—

(1) to develop any new self-determination contract authorized pursuant to this Act;

(2) to provide for the assumption by such Indian tribe or tribal organization of any program, or portion thereof, provided for in the Act of April 16, 1934 (48 Stat. 596), as amended by this Act, any other program or portion thereof which the Secretary is authorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto; or

(3) to develop modifications to any proposal for a self-determination contract which the Secretary has declined to approve pursuant to section 102 of this Act.".

SEC. 203. PERSONNEL

Section 105 of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, Act of January 4, 1975, 88 Stat. 2203, as amended) is further amended—

(a) by redesignating such section as section "104"; and

(b) in subsection (e), by deleting the words "on or before December 31, 1988".

SEC. 204. ADMINISTRATIVE PROVISIONS

Section 106 of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, Act of January 4, 1975, 88 Stat. 2203, as amended) is further amended—

(a) by redesignating such section as section "105";

(b) by changing the period at the end of existing subsection "(a)" to a colon and adding the following new proviso at the end thereof: *"Provided further,* That the Office of Federal Procurement Policy Act (Public Law 93-400, Act of August 30, 1974, 88 Stat. 796) and Federal acquisition regulations promulgated thereunder shall not apply to self-determination contracts.";

(c) by striking existing subsection "(c)" and inserting the following in lieu thereof:

"(c) Any self-determination contract requested by an Indian tribe or tribal organization pursuant to section 102 of this Act shall be for a term not to exceed three years in the case of a new contract, and for a term not to exceed five years in the case of a mature contract unless the appropriate Secretary determines that a longer term would be advisable: *Provided,* That the amounts of such contracts shall be subject to the availability of appropriations: *Provided further,* That the amounts of such contracts may be renegotiated annually to reflect factors, including but not limited to cost increases beyond the control of an Indian tribe or tribal organization.";

(d) by striking existing subsection "(d)" and inserting the following in lieu thereof:

"(d) Whenever an Indian tribe or tribal organization requests retrocession of the appropriate Secretary for any contract entered into pursuant to this Act, such retrocession shall become effective upon a date specified by the appropriate Secretary not less than one year from the date of the request by the Indian tribe or tribal organization at such date as may be mutually agreed to by the appropriate Secretary and the Indian tribe or tribal organization.";

(e) by striking existing subsection "(e)" and inserting the following in lieu thereof:

"(e) In connection with any self-determination contract or grant made pursuant to section 102 or 103 of this Act, the appropriate Secretary may—

(1) permit an Indian tribe or tribal organization in carrying out such contract or grant, to utilize existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within his jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance;

(2) donate to an Indian tribe or tribal organization the title to any personal property found to be in excess to the needs of the Bureau of Indian Affairs, the Indian Health

Service, or the General Services Administration, including property and equipment purchased with funds under any self-determination contract or grant agreement; and

(3) acquire excess or surplus Government property for donation to an Indian tribe or tribal organization if the Secretary determines the property is appropriate for use by the tribe or tribal organization for a purpose for which a self-determination contract or grant agreement is authorized under this Act."; and

(f) by striking existing subsection "(h)".

SEC. 205 CONTRACT FUNDING AND INDIRECT COSTS

Title I of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, Act of January 4, 1975, 88 Stat. 2203, as amended) is further amended—

(a) by adding the following new section 106:

"SEC. 106. (a) The amount of funds provided under the terms of self-determination contracts entered into pursuant to this Act—

(1) shall include all contract costs incurred by such Indian tribe or tribal organization in connection with such contract;

(2) shall not be reduced to make base funding available for any new self-determination contract;

(3) shall not be reduced to make funding available for contract monitoring or administration by the Secretary;

(4) shall not be less than the appropriate Secretary would have otherwise provided for direct operation of the programs or portions thereof for the period covered by the contract: *Provided*, That any savings in operation under such contracts shall be utilized to provide additional services or benefits under the contract;

(5) shall not be reduced by the Secretary in subsequent years except by a reduction in Congressional appropriations from the previous Fiscal Year for the program or function to be contracted;

(6) shall not be reduced by the Secretary to pay for Federal functions, including but not limited to Federal pay costs, Federal employee retirement benefits, automated data processing, contract technical assistance or contract monitoring; and

(7) shall not be reduced by the Secretary to pay for the costs of Federal personnel displaced by a self-determination contract.

(b) The Secretary of Health and Human Services and the Secretary of the Interior shall provide an annual report in writing to the Select Committee on Indian Affairs and the Committee on Appropriations of the United States Senate, and to the Committees on Interior and Insular Affairs and Appropriations of the United States House of Representatives, on the implementation of this Act. Such report shall include—

(1) an accounting of the total amounts of funds provided for each program or function for direct and indirect costs for new and mature self-determination contracts: *Provided*, That in the annual budget justifications the amounts of funds provided to Indian tribes and tribal organizations under self-determination contracts shall be reported for each program, line-item, activity or element and shall be reported separately from amounts for Agencies, Service Units, Area Field Operations and other Federal functions;

(2) an estimate of the actual obligations of Indian tribes and tribal organizations for direct and indirect costs for self-determination contracts;

(3) the indirect cost rate and type of rate for each Indian tribe or tribal organization negotiated with the Department of Interior Office of Inspector General;

(4) the direct cost base and type of base from which the indirect cost rate is determined for each Indian tribe or tribal organization;

(5) the indirect cost pool amounts and the types of costs included in the indirect cost pools;

(6) activities of the Department of Health and Human Services and the Department of the Interior in assisting Indian tribes to establish and administer indirect cost systems;

(7) a list of requests for technical assistance made by Indian tribes and tribal organizations made pursuant to section 103; and

(8) any findings and recommendations regarding needed improvements in the system of indirect cost funding.

(c) For purposes of determining indirect cost rates in subsequent fiscal years for Fedral programs that provide funding to tribes, other than the Bureau of Indian Affairs and the Indian Health Service, and which have statutory limitations on indirect cost reimbursements, Indian tribes and tribal organizations shall not be held liable for the difference between the amounts actually collected, and the amounts that would have been collected at one hundred percent of their indirect cost rate.

(d) Indian tribes and tribal organizations shall not be held liable for amounts of indebtedness attributable to theoretical or actual under-recoveries or theoretical over-recoveries of indirect costs, as defined in Office of Management and Budget Circular A-87, incurred for fiscal years prior to fiscal year 1988.

(e) The Secretary shall give notice of any disallowance of costs within three hundred and sixty five days of receiving any required audit report and shall provide for an appeal and hearing to the appropriate officials on any such disallowance. Any right of action or other remedy relating to any such disallowance shall be barred unless notice has been given within the designated period.

(f) At least ninety days prior to removing any program from the Indian Priority System, the Secretary of the Interior shall publish in the Federal Register a notice of intent to remove or alter any program in the Indian Priority System, and provide a statement of the impact on base funding levels for each Agency and tribe affected.

(g) Upon the approval of a self-determination contract and at the request of an Indian tribe or tribal organization, the Secretary shall add the indirect cost funding amount awarded for such contract to the amount awarded for direct program funding for the first year and, subject to adjustments in the amount of direct funding available for such contract, for each subsequent year that the program remains continuously under contract. Such combined amount be carried in the contracting agency's budget at the specific budget location of the contracted program for as long as the contractor continously contracts such program.".

SEC. 206. CONTRACT APPEALS

Title I of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, Act of January 4, 1975, 88 Stat. 2203, as amended) is further amended—

(a) by adding the following new section 110:

SEC. 110. (a) Federal district courts shall have original jurisdiction concurrent with the Court of Claims, of any civil action or claim against the appropriate Secretary arising under this Act or under contracts authorized by this Act. In an action brought under this paragraph, the district courts may order appropriate relief including money damages, injunctive relief against any action by an officer of the United States or any Agency thereof contrary to this Act or regulations promulgated thereunder, or mandamus to compel an officer or employee of the United States or any agency thereof, to perform a duty provided under this Act or regulations promulgated hereunder.

(b) No self-determination contract may be modified unilaterally by the United States. Self-determination contracts may be modified only—

(1) at the written request of a tribe; or

(2)(A) if the federal agency states in writing the reasons for the proposed contract modification and provides this written notification to the tribe ninety days in advance of the proposed effective date of modification; and

(B) the tribe is afforded the right to appeal the proposed modification through the Department of Interior Board of Contract Appeals, or through the Department of Health and Human Services Board of Contract Appeals.

(c) The Equal Access to Justice Act (Public Law 96-481, Act of October 1, 1980, 94 Stat. 2325, as amended) shall apply to administrative appeals by Indian tribes and tribal organizations regarding self-determination contracts.

(d) The Contract Disputes Act (Public Law 95-563, Act of November 1, 1978, 92 Stat. 2383 as amended) shall apply to self-determination contracts."; and

(b) by redesignating existing section "110" as section "111".

SEC. 207. SAVINGS PROVISIONS

Nothing in this Act shall be construed as—

(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe; or

(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to Indian people.

SEC. 208. SEVERABILITY

If any provision of this Act or the application thereof to any Indian tribe, entity, person or circumstance is held invalid, neither the remainder of this Act, not the application of any provisions herein to other Indian tribes, entities, persons or circumstances shall be affected thereby.

SECTION-BY-SECTION ANALYSIS—INDIAN SELF-DETERMINATION ACT AMENDMENTS

TITLE I—ADMINISTRATIVE PROVISIONS

Section 101. Short Title and Table of Contents.

Section 102. Declaration of Policy.—The existing declaration of policy is amended to emphasize the commitment of the United States to assist Indian tribes to strengthen tribal program administration and reservation economies.

Section 103. Definitions.—New definitions are added to the Indian Self-Determination Act to clarify the contractability of construction programs, and to clarify funding for contract costs, including indirect costs. A definition of "mature contract" is included in order to simplify reporting requirements for contracts that have been successfully operated by tribes for three or more years. "Self-determination contracts" are defined as intergovernmental contracts that are not procurement contracts. The term "Secretary" is defined to mean either the Secre-

tary of Interior or the Secretary of Health and Human Services, or both.

Section 104. Reporting and Audit Requirements.—The current law is amended by requiring the Secretary to publish proposed contract reporting requirements in the Federal Register prior to imposing such reporting requirements on contractors. For mature contracts, reporting requirements shall consist of quarterly financial statements, an annual single-agency audit and a brief program report.

TITLE II—INDIAN SELF-DETERMINATION ACT AMENDMENTS

The Indian Self-Determination Act is amended by consolidating provisions for contracts with the Secretary of Interior and contracts with the Secretary of Health and Human Services into Section 201.

Section 201. Self-Determination Contracts.—This section restates current law authorizing tribes to contract to operate programs authorized by the Johnson-O'Malley Act of 1934, the Snyder Act of 1921 and the Transfer Act of 1954. This section further authorizes tribes to contract with the Secretary for programs, including construction programs, for which appropriations are made to other departments. This section authorizes tribes to contract to operate any program, or any portion of any program, without regard to the organizational level that such program is operated within the Department of Interior or the Department of Health and Human Services.

Section 201 revises current contract application procedures by eliminating some of the declination criteria. The Secretary is directed to approve a proposal within ninety days unless the Secretary declines to contract. This section clarifies that tribes are eligible to contract for any program or function operated by the Secretaries for the benefit of tribes, regardless of whether such specific programs or functions are operated locally. The Secretary is authorized to allow tribes to consolidate two or more mature contracts into a single contract. Section 201 continues the requirement for liability insurance for contracts with the Secretary of Interior, and provides for federal tort claims coverage for tribal contracts with the Secretary of Health and Human Services.

Section 202. Technical Assistance and Grants to Tribal Organizations.—The current section 104 is redesignated as section 103, and a new subsection 103(d) is added which authorizes the Secretary to provide technical assistance to tribes in the preparation of contract applications.

Section 203. Personnel.—Section 105 is redesignated as section 104. The authority to allow federal employees who transfer to tribal employment to retain civil service benefits is made permanent.

Section 204. Administrative Provisions.—Section 106 is redesignated as section 105. Subsection 105(a) is amended by providing that federal procurement law and federal acquisition regulations shall not apply to Indian self-determination contracts. Subsection 105(c) is amended to allow three-year contracts in the case of new contracts, and five-year contracts for mature contracts. Subsection 105(d) is amended to change the notice of retrocession from 120 days to one year. Subsection 105(e) is amended to allow the Secretary to transfer to tribes property purchased with contract or grant funds. The current subsection (h) is repealed.

Section 105. Contract Funding and Indirect Costs.—A new section 106 is added to the law to clarify provisions for funding self-determination contracts, including indirect costs. This section establishes protections for contract funding levels provided to tribes, and prevents the diversion of tribal contract funds for federal costs.

The new Section 106(b) would require the Secretary of Interior and the Secretary of Health and Human Services to annually report to the Congress an accounting of the amounts of funds provided to tribes for direct and indirect costs for each program; and data on tribal indirect cost rates. Tribes shall not be held liable for uncollectable indirect costs from agencies other than the Bureau of Indian Affairs or the Indian Health Service, for purposes of determining indirect cost rates in subsequent years. Indian tribes shall be forgiven theoretical underrecoveries and overrecoveries and actual underrecoveries incurred prior to fiscal year 1988.

The new Section 106(h) would provide a time limit on disallowing contract costs of 365 days after receipt of the audit report. This section also provides that the Secretary of Interior shall publish in the Federal Register any proposal to alter the Indian Priority System prior to implementing such changes.

The new Section 106 would require the Secretary to add indirect costs to the amount of funds provided for direct costs for self-determination contracts for the first year. The combined amount of direct and indirect costs shall be available for each subsequent year that the program remains continuously under contract.

Section 206. Contract Appeals.—A new section 110 is added to the Indian Self-Determination Act. Section 110(a) authorizes that federal district courts shall have original jurisdiction concurrent with the Court of Claims, regarding civil actions or claims involving self-determination contracts. Section 110(b) prohibits unreasonable and unilateral contract modifications by the federal government. Section 110(c) provides that the Equal Access to Justice Act shall apply to administrative appeals by tribes regarding self-determination contracts. Section 110(d) provides that the Contract Disputes Act shall apply to self-determination contracts.

Mr. INOUYE. Mr. President, today I am very pleased to be cosponsoring a bill to amend the Indian Self-Determination Act. This act was signed into law in January 1975, and during the past 12 years, Indian tribal governments have contracted with the Department of Interior and the Department of Health and Human Services to operate programs previously operated by the Bureau of Indian Affairs and the Indian Health Service.

In most cases, the transfer of control and resources to the tribes made possible by this law has resulted in greater levels of achievement by Indian children in Indian-controlled schools, in greater utilization of health facilities by Indian people, in stronger Indian families because of tribal emphasis on child welfare services, and in better law enforcement by Indian officers. Increased stability in Indian communities as a result of programs operated by Indian tribes has, in turn, enabled Indian leaders to focus their efforts on economic development.

While there has been great progress, there have also been obstacles to Indian self-determination. Inappropriate application of Federal procurement laws and Federal acquisition regulations to self-determination contracts has resulted in excessive paperwork and unduly burdensome reporting and auditing requirements. Fluctuations in annual funding levels for self-determination contracts due to budgetary allocations to cover Federal pay costs, retirement costs, computer costs and other Federal needs have resulted in uncertain planning and management of tribal programs. The consistent failure of Federal agencies to fully fund tribal indirect costs has resulted in financial management problems for tribes as they have struggled to pay for federally mandated annual audits, liability insurance, personnel systems, and other administrative requirements. In short, tribal funds derived from trust resources, which are desperately needed for community and economic development are instead diverted to pay for these indirect costs associated with programs which are a Federal responsibility.

The Committee on Indian Affairs held a hearing on April 22, 1987, at which we heard excellent recommendations for changes in the law from three panels of tribal elected officials, financial managers, planners, program managers, and attorneys. The committee has worked closely with a broad spectrum of tribal experts who have years of experience in contracting and program administration to develop the amendments we are introducing today.

These amendments would strengthen the self-determination aspects of contracting by clarifying that Federal procurement laws and Federal acquisition regulations do not apply to Indian self-determination contracts. These amendments would allow tribes that have successfully operated contracts for 3 or more years, and for which the tribes have clean audits, to consolidate these mature contracts into one multiyear contract. Reporting requirements for mature contracts would be simplified. The annual contract funding base for tribal contracts would be protected from Federal administrative encroachments, thereby providing needed stability for tribal government programs. The Secretary of Inteior and the Secretary of Health and Human Services would be required to annually report the amounts of funds provided to tribes for both direct and indirect costs so that Congress can determine from year to year the trends in self-determination contracts and their associated costs.

I believe this legislation is necessary to achieve the original intent of the Congress when it adopted the Indian Self-Determination Act in 1975. Moreover, this bill is responsive to the concerns expressed by Indian tribes, and these amendments will result in more

effective tribal delivery of local government services and tribal management of resources on Indian lands.

Mr. DOMENICI. Mr. President, I am most pleased to cosponsor this bill today. Its purpose is to make needed improvements to the Indian Self-Determination and Education Assistance Act of 1974. I was an original sponsor of this legislation as introduced in the Senate in the 99th Congress.

This legislation is supported by the all Indian Pueblo Council, the Eight Northern Indian Pueblos Council, and the Five Sandoval Indian Pueblos. They have all been disappointed with the performance of the original 1974 Self-Determination Act, Public Law 93-638. The original law mandated Governmentwide participation. To date, the main participants have been only the Bureau of Indian Affairs [BIA] and the Indian Health Service [IHS].

Public Law 93-638 called for an orderly transition from Federal domination of programs and services for Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In the 10 years of 638 activity, many tribes have been awarded 638 contracts for conducting what would have otherwise been Government-operated programs mainly in education and health.

While the Indian Pueblos and Tribes would like to run many more of the Government programs operating to their benefit, there are some major obstacles to their ability to do so. First of all, the Secretary of any Federal department may decline to allow such a contract for several reasons. Declinations occur if the Secretary finds that: First, services to Indians under the proposed contract will not be satisfactory; second, adequate protection of trust resources is not assured; or third, the proposed project or function to be contracted cannot be properly completed or maintained by the proposed contract. In addition to declination, the Federal Govenment may rescind a 638 contract.

There is also much consternation about the meaning of section 106(h) of Public Law 93-638. This section requires that the contract amount "shall not be less than—the amount that—the appropriate Secretary would have otherwise provided for in his direct operation of the program"—25 U.S.C. 450j(h). The BIA, for example, routinely retains 20 to 40 percent of program amounts for "residual functions of oversight" and other administrative activities.

The issue of contract support costs for operating a 638 contract is another vital issue in Indian self-determination. Recurring shortfalls in agreed-upon support costs have led to many administrative and legal actions to recover costs. This complicated arena of indirect costs and costs that are added because the Federal Government is no longer the provider—for example, liability insurance and depreciation—is a continuing focus of friction in the day-to-day reality of 638 contracting.

Our bill, Mr. President, clarifies the activities that are subject to the Indian self-determination concept. We also attempt to resolve many of the complicated contract support cost issues and the administrative processes for initiating and maintaining a 638 contract. Our aim is to place more trust in the Indian people and their ability to serve their own people. They should not have to face major administrative obstacles in seeking to provide needed services. The Indian people of this land should be supported with consistency and clarity in their efforts to become self-sufficient. The rules of the contracting game should not be as shifting sands.

In his testimony last year before the House Committee on Interior and Insular Affairs, Ross O. Swimmer, Assistant Secretary for Indian Affairs at the Department of Interior, stated his support for these needed improvements. For example, the Assistant Secretary supports the expansion of 638 activity to construction projects on trust lands. On the complicated question of indirect costs or contract support costs, Mr. Swimmer prefers the establishment of an "administrative fee." He is working with the inspector general and others to work out the details for this needed change.

I am pleased to note that Senator INOUYE, chairman of the Senate Select Committee on Indian Affairs, has expressed his interest in solving this recurring and complicated issue. I look forward to working with his committee to find the best solutions to encouraging the Indian people of this country to improve their ability to operate and improve service programs for Indian people.

By strengthening and clarifying congressional intent, we can do a lot for helping Indian tribal administrators to focus their attention on serving their people rather than constantly doing battle with Federal bureaucrats who want to bicker over responsibilities, funding, and oversight. If we are successful, we may actually reduce the bureaucracy and enhance the position of Native Americans to direct their own lives.

● Mr. BINGAMAN. Mr. President, I join my distinguished colleagues in cosponsoring this bill, the Indian Self-Determination and Education Assistance Act of 1987. The Indian Self-Determination Act was signed into law on January 4, 1975, and, over the past 12 years, has served as the statutory basis by which Indian tribal governments contract to operate programs that previously had been operated by the Federal Government.

Although the act was originally intended to promote economic self-sufficiency among tribes, in many cases, this law has become an impediment to tribes achieving such independence. Tribes are often leery of entering into contracts because of the costs involved. Fluctuations in Federal funding levels creates planning uncertainties and the Government's failure to properly fund indirect costs creates economic hardships for the tribes. If they do enter contracts, tribes are faced with burdensome reporting and auditing requirements and excessive paperwork because of inappropriate application of Federal procurement laws and Federal acquisition regulations.

Clearly, as I have been urged by the Pueblos in New Mexico and other Indian tribes, it is time Congress take a second look at the Indian Self-Determination Act. By clarifying that Federal procurement laws and Federal acquisition regulations do not apply to Indian self-determination contracts and by protecting the contracts' funding basis from administrative encroachments, these amendments would go a long way in achieving the original intent of Congress when it first adopted the Indian Self-Determination Act in 1975.●

(Mr. DOLE submitted the following statement for Mr. MCCAIN.)

● Mr. McCAIN. Mr. President, I rise in strong support of the Indian Self Determination Amendments of 1987. I want to commend my distinguished colleague, Senator Evans for his leadership on this most important issue.

Mr. President, the Indian Self-Determination Act of 1975 is a landmark piece of legislation providing tribes with the opportunity to take control and provide direction to programs previously operated by the Bureau of Indian Affairs and the Indian Health Service. While there is no doubt that the law has enabled numerous tribes to achieve a greater degree of self determination, numerous obstacles have also surfaced which have violated both the spirit and letter of the law.

One of the biggest obstacles tribes have encountered has been recovering the full indirect costs they incur in administrating self-determination contracts. What is even more disturbing to me is the lack of assistance the Bureau of Indian Affairs and the Indian Health Service have provided to tribes in addressing this problem. The indirect cost problem and other obstacles experienced by tribes with self-determination contracts were discussed in a very informative study prepared by a task force of the Affiliated Tribes of Northwest Indians entitled: "Determining the True Cost of Contracting Federal Programs for Indian Tribes." I commend this study to my colleagues and ask unanimous consent

that the task force's executive summary to their study be printed immediately following my remarks

I believe this legislation will serve to clarify the original intent of the Congress when it passed the Indian Self-Determination Act in 1975. I look forward to receiving further comments and suggestions from tribes on ways to strengthen the bill. And, I hope the Bureau of Indian Affairs and the Indian Health Service will join this effort to build stronger tribal governments.

There being no obligations, the material was ordered to be printed in the RECORD, as follows:

EXECUTIVE SUMMARY

When Congress enacted the Indian Self-Determination and Education Assistance Act of 1975, it was intended that Tribes would develop strong Tribal governments which would be capable of administering quality programs for the benefit of Indian people.

To Congress and to the Tribes, contracting to operate federal programs meant that the Tribes would have the opportunity to take the funds the U.S. Government would have otherwise spent through the Bureau of Indian Affairs and the Indian Health Service and utilize them to provide services to their respective communities. Section 106 (h) of the Act states that the amount of funds provided to Tribal contractors would not be "less than the appropriate Secretary would have otherwise provided for his operation of the programs or portions thereof for the period covered by the contract." This section assured the Tribes that the funds provided would be *at least as much* as the U.S. Government was spending for its operation.

Tribes generally embraced the spirit of self-determination and worked hard to establish and strengthen their administrative and management capabilities as the necessary foundation for effective Tribal government. As they viewed it, this Act would enable Tribes to address a multitude of needs, including economic development as a step towards self-sufficiency. Over these first eleven years of the Self-Determination Act implementation, the Tribes have assumed responsibility for over 500 million dollars of BIA and IHS programs.

Despite the best intentions, and despite the Tribes' eagerness to assume responsibility for determining their own fate and to achieve economic independence under Self-Determination, things generally did not proceed smoothly. Tribes, many of whom had little or no experience in administering federal programs, were introduced to a complicated set of contracting rules and regulations, including a method of recovering those portions of their costs known as "indirect costs," as determined by the Tribes' negotiated indirect cost rate.

While Tribes have struggled and in some cases met with very serious financial trouble in attempting to utilize indirect cost rates, the BIA and IHS, sister agencies charged with implementing the Self-Determination Act, have compounded the problem by requesting from Congress and allocating to Tribes less than the necessary funds required to operate programs in most budget years since 1975.

Little was understood about indirect costs by the high level bureaucrats in these agencies. While Tribes struggled to gain administrative expertise, these agencies (which employed in excess of 28,000 people) did little to support the Tribes in dealing with the complexities of indirect costs. To date, neither agency has provided even one full-time position to assist Tribes in addressing this critical technical issue. Rather than addressing this contractual problem in a direct and effective manner by advocating sufficient funding, the two agencies, have attempted to bypass the problem by failing to request necessary operational funds and attempting to reduce or limit the recovery of legitimate indirect costs by Tribes.

In 1986, the BIA began advocating a shortsighted fifteen percent flat administrative fee in lieu of the existing negotiated indirect cost rates. If implemented, this policy would prevent Tribes from recovering their full costs for operating federal programs, severely crippling Tribes' capacity to administer programs, and unraveling much of the Tribal management and administrative capability developed during the first eleven years of Self-Determination.

While it seems ludicrous and ironic that the agency responsible for implementing the intent of the Self-Determination Act would not only fail to advocate it but would actually work to undermine the establishment of strong and effective Tribal governments, it is nevertheless obvious that this simplistic cure poses a direct and potentially devastating threat to self-determination.

Recognizing the need for better understanding of current indirect cost problems and potential solutions among both Tribal and federal decision makers, The Northwest Tribes asked that a task force be established to address the issue. The first job of the task force was to publish an educational document that would examine the methods and uses of indirect costs as a cost recovery mechanism during the past eleven years. This report is the result of that effort.

The report takes the position that indirect costs or rates are really not the issue. The main issue is the recovery of costs incurred by operating federal programs and the equitable payment of total contract costs, both direct and indirect. Failure to provide full financial support places a Tribe in the position of being required to spend more than it can collect when operating contracted programs. For many Tribes, this creates economic hardship and inhibits the incentive to contract. The report further indicates that the provisions of Section 106(h) of the Act have not been met. Neither the Secretary of the Interior nor the Secretary of Health and Human Services has developed a system that complies with that section of the law. That is to say, Tribes have been allocated less funds than the government would have spent for federal operation of the same program. One key feature of the law that must be addressed is how funds are budgeted and allocated, and then how total contract costs are recovered. Right now, this is not happening in any consistent or equitable way. A stable funding base is needed to enhance the development of strong Tribal governments.

It really comes down to this important point: To implement true self-determination, Congress and the BIA/IHS must budget and appropriate adequate funds to contract for federal Indian programs and services. To provide less than adequate funds, in many cases, causes financial hardship and prolongs dependence on the federal government. In short, to allow the BIA and IHS to underfund the P.L. 93-638 contracts is to plot a sure path to programmatic failure.

Tribes want true self-determination. That means being truly recognized as sovereigns and being assisted in developing an economic base that can lead to greater independence and self-sufficiency.

As this publication points out, the solutions to many problems that now block self-determination are neither very costly nor difficult. It will, however, take effective teamwork on the part of all concerned to make them work. It will also require that the Bureau of Indian Affairs and the Indian Health Service assume an advocacy role. Paying lip service to the concept of self-determination will not be enough. That commitment must be reinforced with fair and consistent enforcement of regulations that recognize variations in Tribes's managerial responsibilities, and with funding policies that enables Tribes to operate programs efficiently and effectively.●

ADDITIONAL COSPONSORS

S. 303

At the request of Mr. BRADLEY, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 303, a bill to establish a Federal program to strengthen and improve the capability of State and local educational agencies and private nonprofit schools to identify gifted and talented children and youth and to provide those children and youth with appropriate educational opportunities, and for other purposes.

S. 860

At the request of Mr. BOREN, the names of the Senator from Kansas [Mrs. KASSEBAUM] and the Senator from South Dakota [Mr. DASCHLE] were added as cosponsors of S. 860, a bill to designate "The Stars and Stripes Forever" as the national march of the United States of America.

S. 1075

At the request of Mr. LAUTENBERG, the name of the Senator from Montana [Mr. MELCHER] was added as a cosponsor of S. 1075, a bill to require the processing of applications from Cuban nationals for refugee status and immigrant visas.

S. 1162

At the request of Ms. MIKULSKI, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of S. 1162, a bill to amend chapter 89 of title 5, United States Code, to provide authority for the direct payment or reimbursement to certain health care professionals; to clarify certain provisions of such chapter with respect to coordination with State and local law; and for other purposes.

S. 1188

At the request of Mr. SYMMS, the names of the Senator from North Carolina [Mr. HELMS] and the Senator from Oklahoma [Mr. BOREN] were added as cosponsors of S. 1188, a bill to amend the Internal Revenue Code of 1986 to allow certain associations of

football coaches to have a qualified pension plan which includes cash or deferred arrangement.

S. 1345

At the request of Mr. MCCONNELL, the names of the Senator from Delaware [Mr. ROTH] and the Senator from New Jersey [Mr. BRADLEY] were added as cosponsors of S. 1345, a bill to allow the National Association of State Racing Commissioners, State racing commissions and regulatory authorities that regulate parimutuel wagering to receive and share Federal Government criminal identification records.

S. 1427

At the request of Mr. BOSCHWITZ, the names of the Senator from Minnesota [Mr. DURENBERGER] and the Senator from Virginia [Mr. WARNER] were added as cosponsors of S. 1427, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to cancel the registration of certain cyclodienes.

S. 1468

At the request of Mr. MITCHELL, the names of the Senator from Massachusetts [Mr. KENNEDY] and the Senator from Michigan [Mr. LEVIN] were added as cosponsors of S. 1468, a bill to provide for a Samantha Smith Memorial Exchange Program to promote youth exchanges between the United States and the Soviet Union, and for other purposes.

S. 1567

At the request of Mr. BUMPERS, the names of the Senator from Hawaii [Mr. INOUYE] and the Senator from Montana [Mr. BAUCUS] were added as cosponsors of S. 1567, a bill to provide for refunds pursuant to rate decreases under the Federal Power Act.

S. 1594

At the request of Mr. GRAHAM, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 1594, a bill to improve the operation of the Caribbean Basin Economic Recovery Act.

S. 1595

At the request of Mr. DOMENICI, the name of the Senator from Virginia [Mr. TRIBLE] was added as a cosponsor of S. 1595, a bill to amend title 5, United States Code, to provide for the establishment of a voluntary leave transfer program for Federal employees, and for other purposes.

S. 1622

At the request of Mr. DASCHLE, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 1622, a bill to amend the Internal Revenue Code of 1986 to treat rural electric or telephone cooperatives in the same manner as other cooperatives for purposes of the book income preference under the minimum tax.

S. 1623

At the request of Mr. DASCHLE, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 1623, a bill to amend the Internal Revenue Code of 1986 to permit rural telephone cooperatives to have qualified cash or deferred arrangements, and for other purposes.

S. 1625

At the request of Mr. SANFORD, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 1625, a bill to enhance the effectiveness and independence of the U.S. Court of Military Appeals.

SENATE JOINT RESOLUTION 148

At the request of Mr. D'AMATO, the name of the Senator from Delaware [Mr. ROTH] was added as a cosponsor of Senate Joint Resolution 148, a joint resolution designating the week of September 20, 1987, through September 26, 1987, as "Emergency Medical Services Week."

SENATE JOINT RESOLUTION 172

At the request of Mr. BRADLEY, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of Senate Joint Resolution 172, a joint resolution to designate the period commencing February 21, 1988, and ending February 27, 1988, as "National Visiting Nurse Association Week."

SENATE RESOLUTION 219

At the request of Mr. DASCHLE, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of Senate Resolution 219, a resolution expressing the sense of the Senate with respect to the use of ethanol, methanol, and other oxygenated fuels as an accepted air pollution control strategy in non-attainment areas designed by the Environmental Protection Agency.

SENATE RESOLUTION 284—RELATING TO ADVANCING DEFICIENCY PAYMENTS

Mr. DOLE (for himself, Mr. MELCHER, Mr. GRASSLEY, Mr. DURENBERGER, Mr. COCHRAN, Mr. BAUCUS, Mr. NICKLES, Mr. BOSCHWITZ, Mr. HEFLIN, Mr. KARNES, Mr. PRYOR, Mr. MCCLURE, Mr. BENTSEN, and Mr. EXON) submitted the following resolution; which was referred to the Committee on Agriculture, Nutrition, and Forestry:

S. RES. 284

Resolved, That it is the sense of the Senate that the Secretary of Agriculture should—

(1) make advance deficiency payments for the 1988 crop of wheat, feed grains, upland cotton, and rice in accordance with section 107C of the Agricultural Act of 1949 (7 U.S.C. 1445b-2); and

(2) base such payments on—

(A) in the case of wheat and feed grains, up to 40 percent of the projected payment rate; and

(B) in the case of upland cotton and rice, up to 30 percent of the projected payment rate.

Mr. DOLE. Mr. President, today I am joined by Senators MELCHER, GRASSLEY, DURENBERGER, COCHRAN, BAUCUS, NICKLES, BOSCHWITZ, HEFLIN, KARNES, PRYOR, MCCLURE, and EXON in introducing a sense of the Senate resolution urging the administration to make advance deficiency payments available to farmers on their 1988 program crops.

BACKGROUND

In recent years farmers have received advanced deficiency payments at the time they sign up to participate in the Government farm programs. We are urging the Department to announce advance payments up to the levels of past years, or 40 percent for wheat and feed grains and 30 percent for rice and cotton.

These payments have been especially valuable to cash-strapped farmers who have difficulty obtaining adequate credit or who need to pay off debts.

BUDGET PROJECTIONS

I understand the administration has projected that farm program costs will decline to $16 billion for fiscal year 1988, which will be $7 billion below the fiscal year 1987 future. A key assumption, however, is that no advanced deficiency payments will be made to farmers on their 1988 crop, thereby saving almost 45 billion of fiscal year 1988 spending.

AN IMPORTANT SIGNAL

Mr. President, I suggest failure to advance deficiency payments would be an unreasonable burden to place on farmers. Many farmers and their lenders have made their financial planning decisions based on expectations of advanced deficiency payments being made on a consistent basis.

The resolution introduced today sends a signal to the American farmer that we will ensure continuity in disbursement of program payments and prevent disruptions in farmers' planned operating procedures.

Advancing deficiency payments at the same rate of previous years would give farmers about $5 billion in cash to help them pay off debts and operating loans. This is particularly important at a time when Congress is considering legislation to shore up the ailing Farm Credit System and assist its' member-borrowers.

CONCLUSION

Some of my colleagues have suggested reducing the level of advanced deficiency rates to achieve budget reconciliation targets. I would simply say this sense of the Senate resolution will not lock anyone into specific payments levels. Most importantly, we need to let farmers know that it is congressional intent to provide advanced deficiency payments once again.

I would urge my colleagues to support the resolution.

Mr. MELCHER. Mr. President, I am very pleased to join Senator DOLE in offering this sense of the Senate resolution that would urge the Secretary of Agriculture to make advance deficiency payments for major program crops.

This is good policy and policy that we have followed in the past. I would like to stress that these do not represent new or additional payments for our agricultural producers. They are payments to which they are entitled.

The difference is in the timing of the payments. And that question of timing can be all important.

Right now in the Subcommittee on Agricultural Credit we are in the midst of marking up a bill to help assure that our farmers and ranchers can get the credit that they need to stay in business. Advance payments can significantly reduce that need for credit. Funds that a farmer and rancher receives in December can be used for payments necessary during the planting season.

These payments will not impact the Federal total outlays. That will be the same regardless. For the individual producer, however, a matter of a few months can make a very real difference.

I certainly hope that our colleagues will quickly agree to this resolution and that the Secretary of Agriculture will follow the sound advice that we are offering.

AMENDMENTS SUBMITTED

DEPARTMENT OF DEFENSE AUTHORIZATION ACT, FISCAL YEARS 1988 AND 1989

HATFIELD (AND OTHERS) AMENDMENT NO. 697

Mr. HATFIELD (for himself, Mr. ADAMS, Mr. BUMPERS, and Mr. MURKOWSKI) proposed an amendment to the bill (S. 1174) to authorize appropriations for fiscal years 1988 and 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal years for the Armed Forces, and for other purposes; as follows:

On page 110, between lines 13 and 14, insert the following new section:

SEC. . Notwithstanding any other provision of law, the War Powers Resolution shall be deemed to apply beginning 48 hours after the designation of the imminent danger zone on August 25, 1987, and the use of United States Armed Forces in such zone, as if the report pursuant to section 4(a) of that Resolution had been transmitted within such period.

ADAMS AMENDMENT NO. 698

Mr. ADAMS proposed an amendment to amendment No. 697 proposed by Mr. HATFIELD (and others) to the bill S. 1174, supra; as follows:

On page 1, strike all after "Sec." and insert the following new section:

SEC. . Notwithstanding any other provision of law, the requirement for the transmittal to the Congress of the report described in section 4 (a)(1) of War Powers Resolution shall be deemed to apply to the escort, protection, or defense of any vessel which has been reregistered under the United States flag and which as of June 1, 1987 was owned by the government or nationals of any country bordering the Persian Gulf. Furthermore, in the event that such report is not so transmitted, the provisions of the War Powers Resolution shall be deemed to apply, beginning 48 hours after enactment of this act as if that report were transmitted within such period, unless such reregistered vessels have been further reregistered under the flag of a country other than the United States.

BUMPERS AMENDMENT NO. 699

Mr. BUMPERS proposed an amendment to the bill S. 1174, supra; as follows:

At the appropriate place in the bill, insert the following:

"SEC. . Notwithstanding any other provision of law, no agency of the federal government may plan for, fund, or otherwise support the development of architectures, components, or subcomponents for strategic defense against air-breathing or ballistic missile threats that would permit such strategic defenses to initiate the directing of damaging or lethal fire except by affirmative real-time human decision at an appropriate level of authority."

BUMPERS (AND PRYOR) AMENDMENT NO. 700

Mr. BUMPERS (for himself and Mr. PRYOR) proposed an amendment to the bill S. 1174, supra; as follows:

At the appropriate place in the bill, insert the following new Title:

TITLE . REQUIREMENT TO LEASE LANDS TO THE CITY OF BARLING, ARKANSAS

Sec. (1)(a) IN GENERAL.—The Secretary of the Army shall lease to the city of Barling, Arkansas, for the use by that city in the treatment of sewage, the following tracts of land at Fort Chaffee, Arkansas:

(1) A tract consisting of 320 acres and more particularly described as the NE ¼ and the NW ¼ of section 34, Township 8 North, Range 31 West.

(2) A tract 40 feet wide running from the northern boundary of the tract described in paragraph (1) to the Arkansas River, as may be agreed upon by the Secretary and the city of Barling.

(b) LEASE REQUIREMENTS.—(1) The lease shall authorize the city of Barling to construct and maintain a wastewater treatment facility on the land leased under subsection (a). Upon termination of the lease, the United States shall have all right, title, and interest in and to any improvements on the land.

(2) The lease shall be for such period, not less than 55 years, as may be agreed upon by the Secretary of the Army and the city of Barling.

(3) The lease shall require the city of Barling to pay rent for the use of the land in an amount to be agreed upon by the Secretary and the city. The amount of the rent may not exceed $1,600 per year.

SEC. 2. ALTERNATIVE OPTIONS.

(a) IN GENERAL.—(1) In lieu of leasing to the city of Barling the lands described in section 1(a), the Secretary may lease to the city other lands under the jurisdiction of the Secretary adjacent to existing lagoons at Fort Chafee, Arkansas, for use by the city in the treatment of sewage.

(2) Land leased to the city pursuant to paragraph (1) shall be leased at an annual rate of not more than $5 per acre.

(3) Any lease entered into pursuant to paragraph (1) shall be subject to paragraphs (1) and (2) of section 1(b).

(b) Use of Army Sewage Treatment Facility.—The Secretary may permit the city of Barling to use the sewage treatment facilities of Fort Chafee under an agreement which would require the city to pay a reasonable cost for the use of such facilities and any reasonable costs incurred by the Army. In increasing the capacity of the sewage treatment facilities at Fort Chafee in order to accommodate the use of such facilities by the city of Barling.

SEC. 3. ADDITIONAL PROVISIONS.

(a) LEGAL DESCRIPTION OF LANDS.—The exact acreage and legal description of any land to be leased under this section shall be determined by surveys that are satisfactory to the Secretary. The cost of such surveys shall be borne by the city of Barling.

(b) ADDITIONAL TERMS AND CONDITIONS.—Any lease or other agreement entered into under this Act shall be subject to such other terms and conditions as the Secretary of the Army determines necessary or appropriate to protect the interests of the United States.

WILSON AMENDMENT NOS. 701 AND 702

Mr. WILSON proposed two amendments to the bill (S. 1174) supra; as follows:

AMENDMENT 701

On page 191, strike out lines 15 through 24.

On page 192, line 1, strike out "SEC. 2818" and insert in lieu thereof "SEC. 2817".

AMENDMENT NO. 702

On page 198, between lines 4 and 5, insert the following new section:

SEC. 2827. LEASE OF PROPERTY AT THE NAVAL SUPPLY CENTER, OAKLAND, CALIFORNIA

(a) IN GENERAL.—Subject to subsections (b) through (g), the Secretary of the Navy may lease, at fair market rental value, to the Port of Oakland, California, not more than 195 acres of real property, together with improvements thereon, at the Naval Supply Center, Oakland, California.

(b) TERM OF LEASE.—The lease entered into under subsection (a) may be for such term as the Secretary determines appropriate, with an initial term not to exceed 25 years with an option to extend for a term not to exceed 25 years.

(c) REPLACEMENT AND RELOCATION PAYMENTS.—The Secretary may, under the terms of the lease, require the Port of Oakland to pay the Secretary—

(1) a negotiated amount for the structures on the leased property requiring replacement by the Secretary; and

(2) a negotiated amount for expenses to be incurred by the Navy with respect to vacating the leased property and relocating to other facilities.

(d) USE OF FUNDS.—(1) Funds received by the Secretary under subsection (c) may be used by the Secretary to pay for relocation expenses and constructing new facilities or making modifications to existing facilities which are necessary to replace facilities on the leased premises.

(2)(A) Funds received by the Secretary for the fair market rental value of the real property may be used to pay for relocation and replacement costs incurred by the Navy in excess of the amount received by the Secretary under subsection (c).

(B) Funds received by the Secretary for such fair market rental value in excess of the amount used under subparagraph (A) shall be deposited into the miscellaneous receipts of the Treasury.

(e) AUTHORITY TO DEMOLISH AND CONSTRUCT FACILITIES.—The Secretary may, under the terms of the lease, authorize the Port of Oakland to demolish existing facilities on the leased land and to provide for the construction of new facilities on such land for the use of the Port of Oakland.

(f) REPORT.—The Secretary may not enter into a lease under this section until—

(1) the Secretary has transmitted to the Committee on Armed Services of the Senate and of the House of Representatives a report containing an explanation of the terms of the lease, especially with respect to the amount the Secretary is to receive under subsection (c) and the amount that is expected to be used under subsection (d)(2); and

(2) a period of 21 days has expired after the date on which such report was received by such Committees.

(g) ADDITIONAL TERMS.—The Secretary may require such additional terms and conditions in connection with the lease authorized by this section as the Secretary considers appropriate to protect the interests of the United States.

DIXON AMENDMENT NO. 703

Mr. DIXON proposed an amendment to the bill S. 1174, supra; as follows:

On page 198, between lines 4 and 5, insert the following new section:

SEC. . LAND CONVEYANCE, CHANUTE AIR FORCE BASE, ILLINOIS

(a) AUTHORITY TO SELL.—Subject to subsections (b) through (g), the Secretary of the Air Force may sell all or any portion of that track of land (together with any improvements thereon) which compromises the Chapman Court Housing Annex, a housing complex near Chanute Air Force Base, Illinois, consisting of 49 acres, more or less.

(b) CONDITIONS OF SALE.—Before the Secretary enters into a contract for the sale of any or all of the property referred to in subsection (a), the prospective buyer shall be required—

(1) to carry out the following projects at Chanute Air Force Base in accordance with specifications mutually agreed upon by the Secretary and the prospective purchaser:

(A) Widen and extend Heritage Drive.

(B) Construct a new entrance gate (including a gate guardhouse) to serve as the main entrance from U.S. Route 45.

(C) Construct a visitor reception center and parking lot to serve such center.

(D) Construct new streets or alter existing streets in order to effectively reroute automobile traffic (on the Air Force Base) to and from the proposed new gate.

(c) COMPETITIVE BID REQUIREMENT AND MINIMUM SALE PRICE.—(1) The sale of any of the land referred to in subsection (a) shall be carried out under publicly advertised, competitively bid, or competitively negotiated contracting procedures.

(2) In no event may any of the land referred to in subsection (a) be sold for less than its fair market value, as determined by the Secretary.

(d) REPORT REQUIREMENTS.—(1) The Secretary may not enter into any contract for the sale of any or all of the land referred to in subsection (a) unless—

(A) the Secretary has submitted to the appropriate committees of Congress a report containing the details of the contract proposed to be entered into by the Secretary under this section; and

(B) a period of 21 days has expired following the date on which the report referred to in clause (A) received by such committees.

(2) Any report submitted under paragraph (1) shall include—

(A) a description of the price and terms of the proposed sale;

(B) a description of the procedures used in selecting a buyer for the land; and

(C) all pertinent information regarding the appropriate project selected by the Secretary.

(e) USE OF EXCESS FUNDS.—If the fair market value of the property conveyed to a buyer under this section is greater than the fair market value of the facilities constructed by the buyer for the United States, as determined by the Secretary, the buyer shall pay the difference to the United States. Any such amount paid to the Secretary shall be deposited into the general fund of the Treasury.

(f) LEGAL DESCRIPTION OF LAND.—The exact acreage and legal description of any land conveyed under this section shall be determined by a survey which is satisfactory to the Secretary. The cost of such survey shall be borne by the buyer.

(g) ADDITIONAL TERMS.—The Secretary may require such additional terms and conditions under this section as the Secretary considers appropriate to protect the interest of the United States.

PRYOR (AND BUMPERS) AMENDMENT NO. 704

Mr. PRYOR (for himself and Mr. BUMPERS) proposed an amendment No. 704, supra; as follows:

On page 198, between lines 4 and 5, insert the following:

SEC. 2827. DISPOSITION OF REAL PROPERTY AT AIR FORCE MISSILE SITES.

(a) IN GENERAL.—Chapter 949 of title 10, United States Code, is amended by adding at the end the following:

"§ 9781. Disposition of real property at Air Force missile sites

"(a) IN GENERAL.—The Secretary of the Air Force shall dispose of the interest of the United States in any tract of real property described in paragraph (2) or in any easement held in connection with any such tract of real property only as provided in this section.

"(2) The real property referred to in paragraph (1) is any tract of land (including improvements thereon) owned by the Air Force that—

"(A) is not required for the needs of the Air Force and the discharge of the responsibilities of the Air Force, as determined by the Secretary of the Air Force;

"(B) does not exceed 25 acres;

"(C) was used by the Air Force as a site for one or more missile launch facilities, missile launch control buildings, or other facilities to support missile launch operations; and

"(D) is surrounded by lands that are adjacent to such tract and that are owned in fee simple by one owner or by more than one owner jointly, in common, or by the entirety.

"b) PREFERENCE FOR SALE TO OWNERS OF SURROUNDING LANDS.—The Secretary shall convey, for fair market value, the interest of the United States in any tract of land referred to in subsection (a) or in any easement in connection with any such tract of land to any person or persons who, with respect to such tract of land, own lands referred to in paragraph (2)(D) of such subsection and are ready, willing, and able to purchase such interest for the fair market value of such interest. Whenever such interest of the United States is available for purchase under this section, the Secretary shall transmit a notice of the availability of such interest to each such person.

"(c) DETERMINATION OF FAIR MARKET VALUE.—The Secretary shall determine the fair market value of the interest of the United States to be conveyed under this section.

"(d) WAIVER OF REQUIREMENT TO DETERMINE WHETHER PROPERTY IS EXCESS OR SURPLUS PROPERTY.—The requirement to determine whether any tract of land described in subsection (a)(2) is excess property or surplus property under title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.) before disposing of such tract shall not be applicable to the disposition of such tract under this section.

"(e) ADDITIONAL TERMS AND CONDITIONS.—The disposition of a tract of land under this section to any person shall be subject to (1) any easement retained by the Secretary with respect to such tract, and (2) such additional terms and conditions as the Secretary considers necessary or appropriate to protect the interests of the United States.

"(f) LEGAL DESCRIPTION OF LANDS.—The exact acreage and legal description of any tract of land to be conveyed under this section shall be determined in any manner that is satisfactory to the Secretary. The cost of any survey conducted for the purpose of this subsection in the case of any tract of land shall be borne by the person or persons to whom the conveyance of such tract of land is made.

"(g) OTHER DISPOSITION OF PROPERTY.—If any real property interest of the United States described in subsection (a) is not purchased under the procedures provided in subsections (a) through (f), such tract may be disposed of only in accordance with the Federal Property and Administrative Services Act of 1949.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 949 of such title is amended by adding at the end the following:

"9781. Disposition of real property at Air Force missile sites.".

BINGAMAN (AND DOMENICI) AMENDMENT NO. 705

Mr. BINGAMAN (for himself and Mr. DOMENICI) proposed an amendment to the bill S. 1174, supra; as follows:

One page 22, between lines 8 and 9, insert the following new section:

SEC. 229. DEPARTMENT OF DEFENSE HIGH-TEMPERATURE SUPERCONDUCTIVITY RESEARCH AND DEVELOPMENT PROGRAM

(a) AUTHORIZATION.—(1) Of the funds appropriated or otherwise made available to the Department of Defense pursuant to section 201 for research, development, test, and evaluation, $60,520,000 of the amount appropriated for fiscal year 1988 and $60,520,000 of the amount appropriated for fiscal year 1989, may be obligated only for research and development relating to superconductivity at high critical temperatures.

(2) Of the amount that may be obligated under paragraph (1) for each of fiscal years 1988 and 1989, $10,520,000 may be obligated only for support of research and development activities that—

(A) are conducted under the superconductor program of the Defense Advanced Research Project Agency of the Department of Defense or under the superconductor program of any other entity involved in superconductor research and development; and

(B) accelerate advanced development of superconductor technology to support the Electric Drive Program of the Department of Defense.

(b) ADMINISTRATIVE PROVISIONS.—(1) The Secretary of Defense shall determine, with respect to the amounts appropriated or otherwise made available to the Army, Navy, Air Force, and Defense Agencies pursuant to section 201 for research, development, test, and evaluation for each of fiscal years 1988 and 1989, the amount to be derived from the Army, Navy, Air Force, and each of the Defense Agencies in each such fiscal year to carry out the high-temperature superconductivity research and development activities of the Department of Defense under this section.

(2) The Under Secretary of Defense for Acquisition or his designee shall—

(A) coordinate the research and development activities of the Department of Defense relating to high-temperature superconductivity; and

(B) ensure that such research and development—

(i) is carried out in coordination with the high-temperature superconductivity research and development activities of the Department of Energy (including the national laboratories of the Department of Energy), the National Science Foundation, the National Bureau of Standards, and the National Aeronautics and Space Administration; and

(ii) complements rather than duplicates such activities.

(c) The Under Secreary of Defense for Acquisition shall take appropriate action—

(1) to ensure the high-temperature superconductivity technology resulting from the research activities of the Department of Defense is transferred to the private sector in accordance with (A) the amendments made by the Federal Technology Transfer Act 1986 (Public Law 99-502; 100 Stat. 1785) to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.), and (B) Executive Order Number 12591, dated April 10, 1987; and

(2) in consultation with the Secretary of Energy, to ensure that the national laboratories of the Department of Energy participate, to the maximum appropriate extent in the transfer of such technology to the private sector.

LAUTENBERG (AND OTHERS) AMENDMENT NO. 706

Mr. LAUTENBERG (for himself, Mr. MOYNIHAN, Mr. SIMON, Mr. WILSON, Mr. SPECTER, Mr. BRADLEY, Mr. PROXMIRE, Mr. PRYOR, Mr. DECONCINI, Mr. METZENBAUM, Mr. BINGAMAN, Mr. DASCHLE, Ms. MIKULSKI, Mr. KERRY Mr. LEVIN, Mr. REID, and Mr. WIRTH) submitted an amendment intended to be proposed by them to the bill S. 1174, supra; as follows:

Insert at the appropriate place in the bill:

SEC. . Wearing of Religious Apparel By Members of the Armed Forces While in Uniform.

(a) IN GENERAL.—Chapter 45 of title 10, United States Code, is amended—

(1) by redesignating section 774 as section 775; and

(2) by inserting after section 773 the following new section 774:

"Sec. 774. Religious apparel: wearing while in uniform

"(a) GENERAL RULE.—Except as provided under subsection (b), a member of the armed forces may wear an item of religious apparel while wearing the uniform of the member's armed force.

"(b) EXCEPTIONS.—The Secretary concerned may prohibit the wearing of an item of religious apparel—

"(1) In circumstances with respect to which the Secretary determines that the wearing of the item would interfere with the performance of the members' military duties; or

"(2) If the Secretary determines, under regulations under subsection (c), that the item of apparel is not neat and conservative.

"(c) REGULATIONS.—The Secretary concerned shall prescribe regulations concerning the wearing of religious apparel by members of the armed forces under the Secretary's jurisdiction while the members are wearing the uniform. Such regulations shall be consistent with subsections (a) and (b).

"(d) RELIGIOUS APPAREL DEFINED.—In this section, the term religious apparel means apparel the wearing of which is part of the observance of the religious faith practiced by the member.".

"(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by striking out the item relating to section 774 and inserting in lieu thereof the following:

"774. Religious apparel: wearing while in uniform.

"775. Applicability of chapter.".

(c) REGULATIONS.—The secretary concerned shall prescribe the regulations required by section 774(c) of title 10, United States Code, as added by subsection (a), not later than the end of the 120-day period beginning on the date of the enactment of this Act.

WALLOP (AND WILSON) AMENDMENT NO. 707

Mr. WALLOP (for himself and Mr. WILSON) proposed an amendment to the bill S. 1174, supra; as follows:

On page 114, between line 13 and 14 insert the following:

(a) REPORT ON NO ABM TREATY LIMITATIONS.—The Secretary of Defense shall submit to Congress a report concerning the effect of no ABM Treaty limitations on the Strategic Defense Initiative Program.

(b) MATTERS TO BE INCLUDED.—The report shall include the following:

(1) An analysis of the ramifications of no ABM Treaty limitations on the development under the Strategic Defense Initiative program of strategic defenses, including comprehensive strategic defense systems, and more limited defenses designed to protect vital United States military and command and control assets. This analysis should compare research and development programs pursued under the restrictive interpretation, the less restrictive interpretation, and no ABM Treaty limitations, including a comparative analysis of—

(A) The overall cost of the research and development programs,

(B) The schedule of the research and development programs, and

(C) The level of confidence attained in the research and development programs with respect to supporting a full-scale engineering development decision in the early- to mid-1990s.

(2) A list of options under no ABM Treaty limitations that meet one or more of the following objectives:

(A) Reduction of overall development cost.

(B) Advancement of schedule for a full-scale engineering development decision.

(C) Increase in the level of confidence in the results of the research by the original full-scale development date.

(c) DEADLINE FOR REPORT.—The report under subsection (a) shall be submitted not later than March 1, 1988.

(d) REPORT CLASSIFICATION.—The report under subsection (a) shall be submitted in both classified and unclassified versions.

HELMS AMENDMENT NO. 708

Mr. HELMS proposed an amendment to the bill S. 1174, supra; as follows:

Add at the end of the bill the following new section:

"SEC. . Of the funds appropriated for operations and maintenance to the Air Force pursuant to Section 301(a)(4), one-tenth of one percent of the amount appropriated for fiscal year 1988 and one-tenth of one percent of the amount appropriated for fiscal year 1989 may be obligated only to redeploy 50 stockpiled Minuteman III missiles into existing Minuteman II silos in order to enhance the strategic modernization program at no additional cost and to release 50 Minuteman II missiles for testing to support the reliability and effectiveness in the aging Minuteman II force.".

WEICKER AMENDMENT NO. 709

Mr. WEICKER proposed an amendment to the bill S. 1174, supra; as follows:

On page 114, between lines 13 and 14, insert the following:

SEC. 812. REQUIREMENT FOR CONSISTENCY IN THE BUDGET PRESENTATIONS OF THE DEPARTMENT OF DEFENSE.

(a) IN GENERAL.—Section 14 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(f) The amounts of the estimated expenditures and proposed appropriations necessary to support programs, projects, and activities of the Department of Defense included pursuant to paragraph (5) of section 1105(a) of title 31 in the budget submitted to Congress by the President under such section for any fiscal year or years and the amounts specified in all program and budget information submitted to Congress by the Department of Defense in support of such estimates and proposed appropriations shall be mutually consistent unless, in the case of each inconsistency, there is included detailed reasons for the inconsistency.

"(g) The Secretary of Defense shall submit to Congress each year, at the same time as the President submits the budget to Congress under section 1105(a) of title 31 for any fiscal year or years, the five-year defense program (including associated annexes) used by the Secretary in formulating the estimated expenditures and proposed appropriations included in such budget for the support programs, projects, and activities of the Department of Defense."

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply with respect to budgets submitted to Congress by the President under section 1105(a) of title 31, United States Code, for fiscal years after fiscal year 1988.

NOTICES OF HEARING

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE

Mr. PRYOR. Mr. President, I would like to announce that the Subcommittee on Federal Services, Post Office, and Civil Service, of the Committee on Governmental Affairs, will hold a hearing on Wednesday, September 23, 1987. The subcommittee will hear testimony on the impact of the proposed catastrophic health legislation on the Federal Employees Health Benefits Program [FEHBP] and the Federal annuitant.

The hearing is scheduled for 9:30 a.m., in room SD-342, Senate Dirksen Office Building. For further information, please call Ed Gleiman, subcommittee staff director, on 224-2254.

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding the following hearing and markup on:

September 21, 1987, beginning at 9 a.m., a field hearing on amendments to the Indian Self-Determination and Education Assistance Act (Public Law 93-638), at the Hyatt Regency Hotel, Tampa, FL; and

September 23, 1987, beginning at 2 p.m., in Senate Russell 485 a markup on S. 1475, clinical staffing recruitment and retention program, and H.R. 2937, miscellaneous technical and minor amendments to laws relating to Indians, and for other purposes.

Those wishing additional information should contact the committee at 224-2251.

AUTHORITY FOR COMMITTEES TO MEET

EDUCATION SUBCOMMITTEE

Mr. BYRD. Mr. President, I ask unanimous consent that the Education Subcommittee, of the Labor and Human Resources Committee, be authorized to meet during the session of the Senate on Friday, September 18, 1987, to conduct a hearing on "Health Education and Gifted and Talented Education."

The PRESIDING OFFICER. Without objection, it is so ordered.

CONSUMER SUBCOMMITTEE

Mr. BYRD. Mr. President, I ask unanimous consent that the Consumer Subcommittee, of the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on September 18, 1987, to hold oversight hearings on general issues related to product liability.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to hold a hearing during the session of the Senate on September 18, 1987, on the nomination of Robert H. Bork to be Associate Supreme Court Justice.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources, Subcommittee on Mineral Resources Development and Production be authorized to meet during the session of the Senate on Friday, September 18, 1987, to receive testimony concerning the National Coal Council's Reserve Data Base Report and the state of information relating to the quality and recoverability of U.S. coal reserves.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

NATIONAL POW/MIA RECOGNITION DAY, 1987

● Mr. KERRY. Mr. President, I am pleased to join with my colleagues in commemorating September 18, 1987, as "National POW/MIA Recognition Day." It is very appropriate that the theme of this day should be "We the People Remember." On the 200th anniversary of the signing of our Constitution, it is fitting that we should remember the men and women who have fought to protect and preserve our freedoms under the Constitution.

All veterans of our Armed Forces deserve and are entitled to special consideration. But we owe a special duty of remembrance to our POW's and MIA's. This is an issue of great concern to many of my fellow Vietnam veterans. Unfortunately, this administration's rhetoric on the issue of POW's and MIA's has not been matched by its record. While the administration talked tough, they did very little for 6 years to make real progress on these issues.

I am encouraged that this administration has now finally begun to take meaningful action to try to resolve the lingering questions surrounding POW's and MIA's. The mission of General Vessey to Vietnam in August of this year appears to have led to real progress in several areas. I am pleased that the process of repatriation of Amerasian children to the United States will be speeded up and obstacles removed. I am also encouraged by the fact that the Vietnamese have pledged to accelerate their efforts to find MIA's if possible, and to lift restrictions on the search for MIA's in Vietnam. Their willingness to release prisoners from reeducation camps is also a positive step. I believe that the agreement reached by General Vessey to provide for American humanitarian assistance in areas such as providing prosthetic limbs to victims of the war in Vietnam is also a step forward.

All of these recent developments are steps in the right direction. However, we know that many of the questions about POW's and MIA's are still not resolved. Many American families are still waiting and wondering, more than a decade after the end of the war. This is a situation which is not acceptable, for Vietnam veterans and for the families of those who served in Vietnam. Until all the questions are answered, the homecoming process will not be complete. We the people remember our brethren who are still missing. On this 200th anniversary of our Constitution, we cannot and will not forget them.●

NEED TO PROVIDE A PREFERENTIAL TAX RATE FOR CAPITAL GAINS

● Mr. BOSCHWITZ. Mr. President, this will be my eighth floor statement on capital gains. I will continue to speak on the subject in the future because, while I was an enthusiastic supporter of the Tax Reform Act of 1986, I very much disagree with the new law's treatment of capital gains.

As my colleagues know, the Tax Reform Act of 1986 slashed both individual and corporate tax rates by un-

precedented amounts. It was truly historic legislation. The new law is fairer, should simplify the Tax Code for many and be a boost to our economy. When a person gets to keep at least 72 cents of every dollar earned as opposed to 50 cents—less than 50 cents when you include State taxes—I really think the incentive to hit the floor running every morning will be increased.

Unfortunately, while the new law lowers tax rates on ordinary income substantially, the tax rate on long-term capital gains will be increased substantially. Under the old tax law—that is, the tax law prior to the Tax Reform Act of 1986—the top Federal tax rate on long-term capital gains was 20 percent. Under the new tax law, capital gains will be taxed as ordinary income. That means the maximum marginal tax rate on capital gains at the Federal level could increase to as high as 33 percent. That's a 65-percent increase.

Unfortunately, that is only half the story. We must also consider State taxes on long-term capital gains. I am told that, under prior law, the top Federal and State combined tax was in Arkansas and North Carolina—$235 per $1,000 of capital gains. In California and New York, tied for third highest, the maximum combined Federal and State tax was $228 per $1,000 of gain.

Under the new law, the combined Federal and State tax will increase substantially in all States. I am told that there could be four States—and also the District of Columbia—where the combined Federal and State tax on $1,000 of long-term capital gains will exceed $400. In no State will the maximum combined tax be less than $330. Again, the maximum under prior law was $235 per $1,000 of gain.

Such an increase is unwise. The increased tax on capital gains will reduce venture capital that leads to new businesses, new jobs, new technology, and new research and development. Certainly new business will continue to be created, but fewer new businesses and projects. Many innovative but risky projects might not go forward. The preference will be to invest in less risky ventures.

In fact, our competitors very much understand the importance of preferential treatment for capital gains. It's a competitiveness issue. According to the American Council for Capital Formation, 11 industrialized countries including Japan, Taiwan, West Germany, Hong Kong, Italy, and South Korea impose no taxes on long-term capital gains, and Canada's maximum tax is only 17 percent.

Opponents of capital gains sometimes argue that an exclusion only benefits the wealthy. That is not true.

For many low- and middle-income taxpayers, and single largest capital gain often comes from the sale of an asset—such as a farm or a business—which they have held for years. In many cases the asset represents a substantial portion of their net worth. The unexpected and very substantial increase in their capital gains tax caused by repeal of the exclusion could be very difficult for these people to bear.

Indeed, in many cases, the capital gain being taxed is not real economic gain, but merely inflationary gain which does not add to personal wealth or purchasing power. That's one of the reasons there was an exclusion under the old law and one of the reasons that capital gains income is different from other income. If you started a business or bought a farm many years ago, worked it for many years and then sold it for a higher price, you would have a tax gain but not necessarily an economic gain. When we remove the capital gains exclusion, the taxpayer will no longer have a cushion against taxing inflationary gain.

Much of the American dream is tied to capital gains. I was just in Jackson, MN, at a parade and picnic and I sat with a fellow I had not known before who ran his business for 30 years and then sold it and the building he occupied on a contract for deed. He was living on that monthly check. Raising his taxes—particularly years after the sale was made—really is uncalled for. And owning real estate in rural America is no bargain these days. I know because I own some. In many instances you are lucky to get your cost of 10 to 20 years ago back, so if you have to pay taxes on the transaction you have a net loss. Capital gains are very important to middle and lower income taxpayers.

Another misperception about a capital gains exclusion involves the revenue impact to the Treasury. During debate of the new law, it was argued that allowing an exclusion was a revenue loser for the Treasury. Interestingly, when the late Congressman Bill Steiger was fighting to push through the capital gains exclusion of the old law, he was faced with a similar argument. In a 1978 letter to Congressman Steiger, then Secretary of the Treasury W. Michael Blumenthal stated that lowering the tax rate on capital gains would cost the Treasury billions annually.

Fortunately, an exclusion was enacted despite the objections of the Treasury. Did revenues to the Treasury from capital gains transactions fall? Quite the contrary, they increased substantially. In 1978, with a top tax rate on capital gains of 49.1 percent, captial gains collections were $9.3 billion. The following years—1979 and 1980—when the maximum rate was lowered to 28 percent, collections jumped to $11.7 billion and $12.5 billion respectively.

Those figures are not at all surprising. Mr. President, I submit for the RECORD a table comparing the tax rate on long-term capital gains with collections from capital gains immediately following my statement. As the chart illustrates, lowering the capital gains rate generally increases collections and increasing the rate generally decreases collections. This reflects the fact that capital gains are voluntary. When rates are high, there is a tendency to hold assets. When rates are lowered, assets turn over more quickly and are put to more productive uses.

While I agree with what seems to be a general sentiment here in Congress that we should leave the Tax Code alone for a while, give taxpayers a chance to catch their breath, I think an exception does need to be made in the case of capital gains. Accordingly, both last year and again this year I introduced legislation—S. 444 in this Congress—to reinstate a differential tax rate for long-term capital gains. Under my proposal, the exclusion for assets held at least 1 year would be 40 percent. For assets held 3 years or more, the exclusion would be increased to 60 percent. These exclusions will bring the tax rate on capital gains back in line with the rate under the old law. As the historical figures indicate, it should not result in a loss of revenue to the Treasury.

Mr. President, I yield the floor.

The table follows:

CAPITAL GAINS RATE INCREASES RESULT IN REDUCED REVENUES—CAPITAL GAINS RATE CUTS RESULT IN INCREASED REVENUES

	Maximum capital gains rate (percent)	Capital gains revenues
Year:		
1968	25.9	$5,943,000,000
1969	27.5	5,275,000,000
1970	32.2	3,161,000,000
1971	30.8	4,380,000,000
1972	45.5	5,708,000,000
1973	45.5	5,366,000,000
1974	45.5	4,253,000,000
1975	45.5	4,535,000,000
1976	49.1	6,621,000,000
1977	49.1	8,104,000,000
1978	49.1	9,348,000,000
1979	28.0	11,669,000,000
1980	28.0	12,459,000,000
1981	20.0	12,684,000,000
1982	20.0	12,900,000,000
1983	20.0	17,800,000,000

Source: American Council for Capital Formation.●

NO QUICK FIX FOR TRADE DEFICIT

● Mr. HEINZ. Mr. President, for several years now economists have been urging a decline in the dollar's value as a solution for all our trade woes. The events of the past several years have demonstrated the error of that simplistic analysis. Apparently we are now beginning to make progress in the economic profession, as demonstrated by a recent article in the Journal of

Commerce which stresses that there is no such "quick fix."

The article by Keith Rockwell, "No Quick Fix for U.S. Trade Deficit," that appeared in the Journal of Commerce, August 21, 1987, contends that either fiscal or monetary methods must be used in order to change the savings and consumption rates which are responsible for much of our trade balance problems. A monetary approach will drive up interest rates, which would in turn drive the dollar up. These increases would harm U.S. industries, and could conceivably result in a recession. A fiscal approach would force a reduction of the Federal budget deficit, a reduction which is obviously very difficult to accomplish.

The importance of this article lies in the fact that it shows quite clearly that a single, simplistic solution, namely the weakening of the dollar, will not accomplish what is necessary. I have argued throughout the last 7 years for the need to find a range of solutions, such as those found in the trade bill, to combat the trade deficit, not just rely on the false promise of a weakening dollar.

Mr. President, I ask that the article be printed in the RECORD.

The article follows:

NO QUICK FIX FOR U.S. TRADE DEFICIT

(By Keith M. Rockwell)

In searching for solutions to the unbroken string of U.S. trade deficits in recent years, economists, administration officials and foreign diplomats agree on one thing: There's no quick fix.

Administration officials have long contended that the 40%-50% depreciation of the dollar against the yen and European currencies over the last two years was the best way to bring the U.S. trade account closer to balance.

But last week's release of the June trade figures challenges that reasoning. Commerce Department figures put the June deficit at $15.7 billion, the second highest monthly figure ever. Some trade analysts project a 1987 deficit of $166 billion, topping last year's record $156.2 billion.

Easing of export control laws, liberalizing the Foreign Corrupt Practices Act and more aggressive action against the trade barriers overseas would all help to reverse the trend, officials say. But the deficit is so large that macroeconomic policy changes are the only way to effectively tackle the problem, they contend.

BORROWING TO PAY FOR IMPORTS

One commonly cited reason for the trade deficit is the low U.S. savings rate. The personal savings rate in the United States is at an historic low. According to the Organization for Economic Cooperation and Development, U.S. households saved 7.3% of disposable income in 1985. This compares with 16% that year in Japan. But since that time, the U.S. rate has fallen even further to less than 3% of disposable income, according to economists.

Not only has the personal savings rate been in decline, but there is a huge "dissavings" factor that hangs like a thundercloud over the U.S. economy—the federal budget deficit.

Instead of saving money, Americans have been on a buying spree, much to the delight of U.S. trading partners. Meanwhile, the sluggish economies in Japan, West Germany and elsewhere, have hampered U.S. export growth.

Without a pool of savings to draw from, the United States is forced to pay higher rates of interest in order to attract foreign savings. As John Makin, economist with the American Enterprise Institute puts it, "capital imports are the mirror image of the trade deficit."

In other words, the United States is borrowing abroad to pay for its imports.

"The trade deficit isn't going to go down without reduction in the budget deficit, unless there's a remarkable surge in savings," Mr. Makin says.

He recommends reforming the tax code so that personal and corporate savings are not taxed twice, first as earned income then as interest on the savings.

The other side of the low savings coin is the staggeringly high U.S. consumption rate. The June trade figures show that exports increased to $21.1 billion, the second highest total on record. But imports were at an all time high of $36.8 billion, $2 billion over the previous monthly high in May.

"We've got to have a three- to four-year program in this country to keep consumption down," says David Hale, economist with Kemper Financial Services Inc. in Chicago. "That means cutting the budget deficit. It's the same old story but it still has to be done."

MONETARY OR FISCAL FIX?

Mr. Hale explains that the two ways to reduce the domestic demand are either through monetary or fiscal policy. On the monetary side that means raising interest rates, he says, which could drive the dollar back up while hurting U.S. industries by increasing the cost of capital. That could mean a recession. If monetary policy is ruled out, he says, fiscal action is the only alternative.

Robert Ortner, Undersecretary of Commerce for Economic Affairs, agrees that the budget deficit needs to be slashed but points out the deficit for fiscal 1987 is projected to be less than $160 billion—a marked improvement over the $221 billion deficit in 1986.

"The budget deficit needs to decline further, yes. How we get across that canyon is something else. Spending just hasn't gone down enough," he says.

Mr. Ortner says tax increases are not the answer. He points out that the new tax laws have produced increased revenues without causing economic drag. In fact, he adds, unemployment has fallen since the new code was enacted.

The bull market on the stock exchange and the higher rate of taxation on capital gains under the new law may account for some of the increase in tax revenue, he says.

He blames June's huge import figures on a number of factors, including speculative purchases of oil imports and "probably some speculative buying of imports out of fear of what Congress might do (on the trade bill)."

As for next month's figures, Mr. Ortner says he would be "both surprised and disappointed" if the deficit were not narrower.

IMPORT PRICES ARE HIGHER

Even considering speculative buying, however, many economists admit they are mystified about why imports are rising. According to the Bureau of Labor Statistics, the surge is occurring despite an increase of 14.5% in import prices since June of 1986.●

CRISIS IN LONG-TERM CARE FOR THE ELDERLY

● Mr. SASSER. Mr. President, I rise today to call attention to an article which appeared in the New York Times on Sunday, September 13, 1987. This article deals with an issue that I have been emphasizing for quite some time—the looming "crisis" in the financing of long-term care.

Mr. President, I use the word "crisis" not as a scare tactic. Rather, this is the finding of a Federal Advisory Commission on Long-Term Health Care Policies. As the article notes, the members of this 18-member blue-ribbon panel are virtually certain that the United States will soon face a crisis in financing long-term health care.

For the past several months, I have sought to focus attention on the question of long-term care. Many believe that we are moving to address this vital concern in the catastrophic health care legislation in both the House and Senate.

Unfortunately, that is simply not the case. While certainly a step in the right direction, the catastrophic health care proposals making their way through the 100th Congress simply do not deal with the issue of long-term health care. There is precious little in these bills that effectively addresses such issues as home, nursing home, and respite care that are necessary for victims of long-term illness.

As the Times article points out, our current Medicare system does even less to assist the elderly on long-term care matters. The Commission's report stressed the importance of acknowledging this major shortcoming in Medicare. Panel members said it was essential for the Government to publicize the fact that Medicare only provides "extremely limited" coverage of nursing home care, the single greatest long-term care expense. Indeed, last year Medicare paid less than 2 percent of the total spent on nursing home care.

It's absolutely shocking that Medicare fails to protect our Nation's elderly from this great expense. Perhaps even more shocking is the fact that private insurance paid an even smaller amount. Private insurors paid less than 1 percent of the $38 million spent on nursing home care last year.

Nursing home care is but one component of comprehensive long-term care for the elderly. As the Commission notes, only 29 percent of those who receive long-term care live in an institution. The same 28 million Americans 65 or older have other long-term care needs such as home health care. Yet, the panel reports that only 423,000 insurance policies for long-term care have been written by 73 companies.

Mr. President, as our population grows older, the pending crisis associated with long-term care can only get worse. As those over age 65 number 35 million in the year 2000, we will be faced with incredible strains and stresses on our health care system.

And let's be clear. The Federal Government is already facing at least a part of this crisis. With so few elderly Americans being able to afford long-term care insurance, most faced with long-term-care costs must turn to personal and family savings. Once that person has exhausted all of their own resources, then the Federal Government offers assistance.

For example, Medicaid, our Nation's health care program for the poor, pays for 42 percent of the elderly's nursing home costs. This is a tragic irony. Government won't pay for the elderly's long-term health care needs at the front end. But, the Government ends up paying for long-term care anyway because the elderly impoverish themselves trying to pay for it and end up on the Medicaid rolls.

Mr. President, we simply must assist our senior citizens before they put themselves in the poor house. We can give our seniors better care in a responsible manner. We can cut the financial costs of such assistance by using reasonable beneficiary premiums. And we can make the elderly's golden years much more trouble free as they should be.

The time to make these changes is now. The Census Bureau estimates that the number of America's senior citizens 65 years or older will increase 22 percent by the year 2000. By the year 2050, nearly a quarter of our Nation's citizens will be over 65. Think of all the suffering, and financial and emotional strain we can avoid if we address this problem now instead of putting it off year after year.

Mr. President, that is the message inherent in the report cited in the Sunday Times article. It is a message that we would do well to heed quickly. I have offered one legislative solution to the crisis of long-term health care in S. 454. The panel report sets forth a number of other ways of addressing this growing problem.

Whether we follow the path set out in my bill or some other approach, we must not dilude ourselves into thinking this problem will go away. We are moving in the right direction with the pending catastrophic health care bills. But clearly, we have far to go.

Mr. President, I think my colleagues would do well to read the Sunday Times article on the crisis in long-term health care. I ask that a copy of the article appear in the RECORD.

The article follows:

[From the New York Times, Sept. 13, 1987]

CRISIS IS PREDICTED IN CARE OF ELDERLY—U.S. PANEL WARNS OF EXPENSE OF LONG-TERM TREATMENT

(By Robert Pear)

WASHINGTON, Sept. 12.—A Federal advisory commission says that there will soon be a "crisis" in the financing of long-term health care and that the Government should provide tax incentives to reduce the expense of insurance covering the high cost of such care.

In a confidential draft of its final report, the panel says that public and private employers should also help employees and retirees obtain insurance for long-term care in nursing homes, other facilities and at home, much as they now offer insurance to cover hospital and doctors' bills. However, the panel opposes any statutory requirement for coverage.

The panel of 18 health and insurance experts emphasized that ordinary health insurance does not cover nursing homes and other forms of long-term care.

HUGE POTENTIAL MARKET

The report, scheduled to be issued later this month, says that workers should be able to withdraw money from pension plans and individual retirement accounts to buy insurance for long-term care.

The panel sees a huge potential market for private insurance: 50 million people 55 years old and over, most of whom are unprepared for the cost of nursing home care. The cost averages $22,000 a year nationwide, according to the Government, and in New York City it often exceeds $35,000 a year.

But Joshua M. Wiener, a researcher at the Brookings Institution who prepared a study for the panel, said, "Private insurance can play a much larger role, but will never be a panacea because only 30 percent to 40 percent of the elderly can afford it." For a person 65 years old, he said, premiums average $300 to $700 a year, and for a 79-year-old person, they often exceed $1,000 a year.

To date, the panel said, 423,000 insurance policies for long-term care have been written by 73 companies, mostly in the last two years. The number of policies is "infinitesimally small when we consider the potential market," the panel said.

Representative Ron Wyden, an Oregon Democrat who introduced the legislation that created the panel last year, said its recommendations would have a powerful influence on Congress. He said he would push to get some of them adopted this year.

Dr. Otis R. Bowen, the Secretary of Health and Human Services, also supports most of the recommendations, according to his aides. The White House and the Treasury are still studying the proposals.

In its report, the panel says that employers and individuals should be allowed to take tax deductions for the premiums they pay on insurance for long-term care. Benefit payments should not be subjected to any tax, it said.

Moreover, it said, insurers should be able to take a tax deduction for money they set aside in reserves to pay benefits under contracts covering long-term care. Likewise, income earned from an insurer's investments should not be taxed if it is required to meet future obligations to policyholders, the panel said.

Such tax preferences would permit insurers to offer coverage at a lower cost, the panel said. More people would then buy coverage and they could do so at an earlier age, the report said.

Similar tax benefits are already available for life insurance and for the usual types of health insurance covering hospital and physician services. But under current law, there is much uncertainty about the tax treatment of insurance for long-term care.

The panel said that "long-term care means much more than nursing home care." It also refers to home health care and various services provided to people who need help with daily activities like dressing, bathing and eating. Only 29 percent of the people receiving long-term care live in an institution, the report said.

DESCRIPTION OF PANEL

The panel, the Task Force on Long-Term Health Care Policies, was created by Congress in April 1986 to investigate the potential market for private insurance. It held six public hearings, commissioned several studies and consulted many experts.

The members, all appointed by Dr. Bowen, include two state insurance commissioners, one Federal health official, two state health officials, two insurance executives, two officers of groups representing the elderly and several providers of long-term care. The chairman was Daniel P. Bourque, senior vice president of Voluntary Hospitals of America, an alliance of more than 760 nonprofit hospitals.

Private insurance paid less than 1 percent of the $38.1 billion spent on nursing home care last year, according to the Department of Health and Human Services. Fifty-one percent of the total, or $19.4 billion, was paid by nursing home residents and their relatives.

Medicaid, the Federal-state insurance program for low-income people, was the other main source, paying $15.8 billion, or 41 percent of the total. Though originally established for the poor, Medicaid finances nursing home care for many middle-class people who have exhausted their own resources.

CRISIS CALLED A CERTAINTY

The panel said it was essential for the Government to publicize the fact that Medicare, the Federal health program for the elderly, provides "extremely limited" coverage of nursing home care. Last year it paid $613 million, or less than 2 percent of the total spent on such care, according to Government data.

Members of the panel said the aging of the population made it virtually certain that there would be a crisis in financing long-term care. The Census Bureau estimates that the number of Americans 65 years old and over will rise 22 percent, from 28.6 million in 1985 to 34.9 million in the year 2000. But the population of those 85 and over, which is most likely to need long-term care, will increase 81 percent, to 4.9 million from 2.7 million, the bureau said.

The panel also made these points:

State insurance regulators "should recognize the experimental nature of long-term care insurance." The Federal Government should not prescribe minimum benefits or other standards unless state regulators fail to protect consumers.

People should not be automatically disqualified from buying insurance for long-term care merely because they have previously been in a nursing home or a hospital.

People who have bought insurance for long-term care should generally be able to renew their policies until they die or exhaust the benefits. Workers should not lose their coverage when they change employers.

If insurance for long-term care becomes more widely available, it could accelerate the demand for nursing home facilities, the panel said. The supply of beds should keep up with the demand, it added.●

200TH ANNIVERSARY OF ERASMUS HALL HIGH SCHOOL

● Mr. D'AMATO. Mr. President, I rise today to commemorate the 200th anniversary of Erasmus Hall High School in Brooklyn, NY.

As the oldest secondary school in New York State and the second oldest in the country, Erasmus Hall High School has much to be proud of. Erasmus Hall has made great contributions to the development of secondary education. It was the first secondary school in America to have a school library and employ a professional librarian; it originated the Arista Honor Society; it administered the first regents examinations.

Erasmus Hall opened its doors on September 27, 1787, just 10 days after the signing of the U.S. Constitution. The school was founded by Dutch settlers in Brooklyn and named for Desiderius Erasmus, a 16th century Dutch philosopher and scholar known for his philosophy of honest inquiry, intelligent curiosity, and a tolerance for all that is good in humanity. Only 26 boys were enrolled in the first class, but the school later began admitting women in 1801.

Two hundred years and a quarter million students later, Erasmus Hall High School remains most innovative in secondary education. It has nevertheless guarded many of the traditions upon which it was founded and still cherishes the original philosophy of its namesake, Desiderius Erasmus.●

NATIONAL POW/MIA RECOGNITION DAY

● Mr. BINGAMAN. Mr. President, today we observe "National POW/MIA Recognition Day." It is a time when all Americans unite to remember the thousands of men and women who fought in our wars and were captured by the enemy or are missing in action. From the Vietnam war there are still over 2,400 men missing.

The sacrifice of these soldiers is beyond what the average citizen can understand. There is no way to understand the brutal and inhumane treatment to which they have been subjected. The families of these courageous young men have suffered immeasurably because of the uncertainty of their loved ones' fate.

Public awareness of the plight of these brave men and the families who long for their return, has made possible the negotiations with the governments holding these men. I commend the veterans organizations, POW/MIA organizations, civic groups, and private citizens whose joint efforts demonstrate to the Vietnamese, Cambodian, and Laos governments that we will not give up our demand for a full accounting of our missing.

This year, the administration has been successful in securing the return to their families the remains of several more of our missing soldiers. I applaud President Reagan for the priority which he has placed on negotiating the return of our POW's and MIA's, and his perseverance in resolving this important humanitarian issue.

But, today, I also want to express my heartfelt sorrow to the families who still have missing loved ones in Southeast Asia. I look forward to the time when their courage and dedication leads them to a successful end to their search.●

ROALD AND GALINA ZELICHONOK, CALL TO CONSCIENCE

● Mr. BINGAMAN. Mr. President, I wish to add my voice to the Congressional Call to Conscience on the plight of Soviet Jews.

Despite the recent release of several prominent Jewish refuseniks from the Soviet Union, the majority of them still face an absolutely deplorable situation. Although I am pleased each time I receive news that someone who has been awaiting permission to emigrate has been granted an exit visa, such good news must be considered in the sobering context of the other thousands of Soviet citizens who have been denied their human rights, persecuted, imprisoned, and denied the right to emigrate. An estimated 400,000 Jewish Soviet citizens have been denied this basic right.

I would like to call attention to the plight of one refusenik couple of particular interest to me. During a visit to the Soviet Union in 1985 I met Mrs. Galina Zelichonok of Leningrad. Her husband, Roald, had just been sentenced to 3 years in a Soviet labor camp on the charge of slandering the Soviet state and its social system. His real crime in the eyes of Soviet officials was his involvement in the promotion of Jewish culture. Despite poor health, aggravated by severe hypertension, Roald had by then already been subjected to solitary confinement and denied medical treatment. Galina had periodically had all her mail cut off, and though nearly blind and an invalid herself, she had been harassed in various other ways.

Subsequent to my 1985 trip, I wrote on several occasions to Soviet officials about the Zelichonoks' plight. I was gratified in February of this year, when Roald was released from the labor camp and allowed to return to Leningrad. This accompanied the return of Andrei Sakharov to Moscow and the release of several other prominent prisoners of conscience. Unfortunately, the Zelichonok's situation is still difficult. After his release Roald requested to be reinstated at the Institute of Cytology where he had worked before his arrest. The institute denied the request, claiming that the research in which he was engaged has been discontinued in spite of the fact that there were six vacancies, among them two for senior engineers, Roald's former position, on their bulletin board. Meanwhile Roald is under threat of arrest for parasitism. Galina, who urgently needs medical attention for her heart and eyes, is afraid to seek it, fearing Roald will be rearrested in her absence.

We must do everything in our power to ensure the right of free emigration from the Soviet Union. Though the emigration of Soviet Jews has increased in 1987, we are far from the pace which saw 51,000 emigrate in 1979. We must apply continuous pressure on the Soviet Government until all those who wish to obtain visas have been allowed to do so.

I would like to commend the 47 of my colleagues in the Senate who recently joined me in writing to General Secretary Gorbachev urging the release of the Zelichonoks on humanitarian grounds. We also wrote to Secretary of State Shultz urging him to take advantage of his meetings with Soviet Foreign Minister Shevardnadze to address the plight of the Zelichonoks, and to request that the Department of State to raise the Zelichonok family's situation in any other appropriate settings.

At the conclusion of my remarks I will submit these letters for the RECORD.

I would like to take this opportunity to congratulate the Union of Councils for sponsoring the Congressional Call to Conscience and to urge all my colleagues to participate in this important effort to promote human rights in the Soviet Union.

The letters follow:

U.S. SENATE,
Washington, DC, September 4, 1987.

Mr. MIKHAIL SERGEEVICH GORBACHEV,
General Secretary, Central Committee, Communist Party of the Soviet Union, The Kremlin, Moscow, U.S.S.R.

DEAR MR. GENERAL SECRETARY: We have noted your recent personal intervention to ease the exit of Soviet Jews and other minorities wishing to emigrate from your country. A significant increase in emigration to the levels that prevailed eight years ago would certainly contribute to improving the climate between our two countries on the eve of the hoped-for Washington summit later this year. We hope that in the future the new emigration policy will allow for expeditious processing of all requests for exit visas, making appeals for individual cases unnecessary.

Meanwhile, however, we request you expedite the cases of Roald and Galina Zelichonok of Leningrad. We were encouraged by Roald's early release from labor camp in February, but remain concerned by his and

his wife's deteriorating health, his inability to find work due to the obstacles placed in his way by local officials, and the continued denial of their request to emigrate.

We strongly believe in the concepts set forth in the 1974 Helsinki Final Act, to which both our nations are signatories. The right of individuals to emigrate freely is one such concept, and one we embrace wholeheartedly.

We appreciate your attention to our humanitarian appeals and ask you to look into this matter personally. Resolution of this and other similar long-term exit visa cases would be seen as a very positive step toward allowing the free emigration promised in the Helsinki Accords.

Sincerely,

William S. Cohen, David L. Boren, Jeff Bingaman, Richard G. Lugar, Don Nickles, Christopher S. Bond, Dale Bumpers, Alan J. Dixon, Charles E. Grassley, John McCain, Daniel P. Moynihan, David Pryor.

Harry Reid, John D. Rockefeller IV, Howard M. Metzenbaum, Bill Bradley, Paul S. Sarbanes, Dennis DeConcini, J. James Exon, Jake Garn, Nancy L. Kassebaum, William Proxmire, Paul Simon, Steve Symms.

Daniel K. Inouye, Orrin G. Hatch, Brock Adams, Arlen Specter, Frank R. Lautenberg, John F. Kerry, Carl M. Levin, Alfonse M. D'Amato, Donald W. Riegle, Jr., George J. Mitchell, Ernest F. Hollings, Mark O. Hatfield.

Bob Graham, J. Bennett Johnston, Timothy E. Wirth, John C. Danforth, Pete Wilson, Thomas A. Daschle, Barbara A. Mikulski, Lawton Chiles, Paul S. Trible, Jr., Warren B. Rudman, Joseph R. Biden, Jr., John H. Chafee.

U.S. SENATE,
Washington, DC, September 4, 1987.

Hon. GEORGE P. SHULTZ,
Secretary of State,
Washington, DC.

DEAR MR. SECRETARY: We are writing you out of concern for Roald and Galina Zelichonok, Soviet Jews who have been denied the right to emigrate.

Mr. Zelichonok is a mainstream, well-respected former prisoner of conscience who recently was released after 18 months of a 3-year labor camp internment on the charge of having slandered the Soviet state. His real crime was the teaching of Hebrew and attempting to preserve Jewish culture. Upon his return to Leningrad, Mr. Zelichonok was not allowed to return to his former job at the Institute of Cytology, despite the fact that announced vacancies in his field exist, and, therefore, he is facing possible charges of parasitism. Mr. Zelichonok has, however, received an offer of employment from Roosevelt University in Chicago.

Both Mr. and Mrs. Zelichonok have severe medical problems, his aggravated by his imprisonment, hers by stress and by the reluctance to seek medical attention, for fear of his rearrest in her absence. Further denial of permission to leave the Soviet Union can only serve to worsen their already deteriorating medical condition.

We ask that you take advantage of your September pre-summit meeting with Foreign Minister Shevardnadze to address the plight of the Zelichonoks, and that the Department of State raise the Zelichonok family's situation in any other appropriate settings.

Sincerely,

William S. Cohen, David L. Boren, Jeff Bingaman, Richard G. Lugar, Don Nickles, Christopher S. Bond, Dale Bumpers, Alan J. Dixon, Charles E. Grassley, John McCain, Daniel P. Moynihan, David Pryor.

Harry Reid, John D. Rockefeller IV, Howard M. Metzenbaum, Bill Bradley, Paul S. Sarbanes, Dennis DeConcini, J. James Exon, Jake Garn, Nancy L. Kassebaum, William Proxmire, Paul Simon, Steve Symms.

Daniel K. Inouye, Orrin G. Hatch, Brock Adams, Arlen Specter, Frank R. Lautenberg, John F. Kerry, Carl M. Levin, Alfonse M. D'Amato, Donald W. Riegle, Jr., George J. Mitchell, Ernest F. Hollings, Mark O. Hatfield.

Bob Graham, J. Bennett Johnston, Timothy E. Wirth, John C. Danforth, Pete Wilson, Thomas A. Daschle, Barbara A. Mikulski, Lawton Chiles, Paul S. Trible, Jr., Warren B. Rudman, Joseph R. Biden, Jr.

THE AMTRAK PRIVATIZATION OPTION

● Mr. HUMPHREY. Mr. President, on August 5, the Senator from New Jersey [Mr. LAUTENBERG] submitted for the RECORD a letter from Amtrak President W. Graham Claytor, Jr., intended to rebut a U.S. Chamber of Commerce policy working paper entitled "Amtrak and the Privatization Option." My colleague from New Jersey urged Senators to read the letter in assessing Amtrak.

In the interests of fairness, I would like today to submit the chamber's response, in the form of a letter from its President, Dr. Richard L. Lesher. My views on Amtrak privatization differ from Senator LAUTENBERG'S—I view Amtrak privatization as an option bearing close scrutiny as we attempt to address the massive Federal budget deficit.

Regardless of one's views on the issue, however, it is one which deserves our careful inspection. We owe it to our constituents to look for ways to lower their tax burden while improving the efficiency of our national transportation network. I urge my colleagues to examine Dr. Lesher's ideas as they form their views on the Amtrak issue.

I ask that the text of the Lesher letter be included in the RECORD.

The letter follows:

CHAMBER OF COMMERCE,
Washington, DC, September 9, 1987.

Mr. W. GRAHAM CLAYTOR, Jr.,
President, Amtrak, National Railroad Passenger Corporation, 400 North Capitol Street, NW., Washington, DC.

DEAR MR. CLAYTOR: Thank you for your letter dated July 15, 1987 and for taking the time to review in detail Ms. Ohri's Policy Working Paper entitled, "Amtrak and the Privatization Option." After carefully considering your concerns and reviewing the paper, I can state at the outset that we stand by our analysis that Amtrak offers an excellent privatization opportunity.

I found your letter to be quite interesting, informative and certainly revealing in terms of the many problems you confront in managing a public enterprise. What was especially interesting, however, were the issues you did not discuss and what parts of Ms. Ohri's paper you did not address. Specifically, we hoped that you would confront the issue of why American taxpayers must pay more than a half a billion dollars to subsidize a form of transportation when consumers have so many other choices available to them from private, unsubsidized providers. We also want to know why this cost should be incurred in an era of $180 billion dollar deficits that have forced Congress to raise taxes even higher, cut back on national defense spending and severely limit funding for a whole range of other programs, such as education and basic welfare. These issues ought to be the key concerns and are the reasons we chose to address Amtrak in our working paper series.

In reading your letter, I now discover that the subsidy problem is even worse than we imagined: a nine dollar subsidy per passenger per meal served on Amtrak trains? That has to be more than what we pay per meal for needy food stamp recipients and certainly more than what many working people would have to pay for lunch in downtown Washington at a typical privately-owned, tax-paying restaurant.

Nonetheless, you did raise a number of questions about some small points that appeared in Ms. Ohri's article, and I appreciate your giving us the opportunity to reply.

Limiting my response to just the substantive concerns, both in the letter and elsewhere you have said that other modes of intercity travel (airlines and highways) are more heavily subsidized than Amtrak. Several critics of Amtrak (Steve Moore, Andrew Selden, John Semmens) have refuted this allegation on numerous occasions. In a February 22, 1985 news conference, you claimed (as you do in this letter) that competing forms of intercity transportation have large hidden subsidies. You then stated that the government spends about $42 subsidizing each airline passenger, compared with $34 per passenger Amtrak subsidy. Some suggest this claim clearly rests on flawed analysis. Steve Moore and John Semmens for example, both demonstrate that what Amtrak actually does is to count the legitimate business tax deductibility of air travel as a "subsidy." By that reasoning, every firm that deducts expenses from its gross revenue to determine profits and tax liability is subsidized by the government. Amtrak also neglects to note that direct federal subsidies to air travel, such as the cost of operating the air traffic control system, are almost completely covered by user fees and taxes; indeed, billions of dollars raised by user fees charged air passengers have in recent years been used to reduce the overall deficit rather than improve the air control system.

When the federal government originally nationalized the passenger railroads in 1971, Congress assured the taxpayers that Amtrak would soon be operating as a "self-sustaining corporation." Indeed, the taxpayers were also told that it was supposed to be a two year "noble experiment." In short, Congress intended to eventually return Amtrak to private hands after a temporary infusion of federal funds. Had Congress believed otherwise, it is doubtful that they would have agreed to take it on, since doing so would entail a perpetual subsidy. Now we are told that American taxpayers were naive to have believed this. This is disturbing in-

formation, because I am certain that a public referendum on the issue would show a great majority of Americans in favor of privatization of Amtrak if they knew the costs to them as taxpayers.

We concede that an error was made when we asserted that the number of passenger miles recorded on the Northeast Corridor decreased since 1981 when in fact they have turned up in the last few years. However, it is important to note that although Amtrak passenger miles have increased by 17 percent since 1981, airline passenger miles have increased far more rapidly, by 47 percent over the same period, and they did this without any federal subsidy. Of course, these differential growth rates indicate that passenger railroad's market share of intercity traffic has fallen substantially. Thus, what is seen as a success in one dimension with selected facts, actually demonstrates further slippage in customer appeal when all the facts are considered.

Although Amtrak's labor improvements are commendable, these reforms fall short of changes that a private corporation could have achieved. As Steve Moore and Warren Brookes have pointed out, Class I freight train workers have achieved a 100 percent productivity improvement record since deregulation in 1970.

On another matter, you contend that Ms. Ohri's paper is just a reprint of the thoroughly rebutted Heritage Foundation paper. A thorough study will reveal that is not so. Upon receipt of your letter, we did contact the folks at Heritage and they tell us that they know of no rebuttal of their paper.

I want to reiterate my view that Amtrak can and should be privatized and that opportunities for management efficiencies remain. We appreciate all that you have accomplished and know that you are doing your best under difficult circumstances.

In closing, let me offer you an opportunity to take your message nationwide in a fair and open debate on our Ask Washington television show. The show airs daily for 60 minutes and reaches a potential audience of 24 million. Taking the opposing position would be an expert on privatization and federal spending who would make the case against continued taxpayer support for Amtrak. This will offer you a unique opportunity to confront your critics and to take your message to the public.

Again, thank you for taking the time to read our paper and to provide us with your detailed response. If you are interested in pursuing the opportunity to appear on our television show, please contact Bonnie Ohri, our Staff Economist, who will help arrange a time that is convenient for you and your opponent.

Sincerely,

RICHARD L. LESHER.●

CENTRAL AMERICA PEACE NEGOTIATIONS AND CONTRA AID VOTES

● Mr. DOMENICI. Mr. President, I would like to take a minute of the Senate's time to explain for the RECORD my vote last night on amendment 694, authorizing aid to the Nicaraguan Resistance.

I voted to table Senator HELMS' amendment to authorize $310 million for military assistance to the Contras. While I may vote for additional military aid if the peace negotiations collapse, I am not prepared to do so now. This is the time to support efforts by our President and the Central American democracies to peacefully pry Nicaragua out of the Soviet bloc.

The President and Speaker WRIGHT agreed last month to put the Contra funding issue aside until September 30. That will allow all of us here and in Central America to focus on efforts that we pray will lead to a more peaceful and democratic region. Although most of us doubt the good faith of the Sandinista rulers in Nicaragua, we owe Cardinal Obando Y Bravo and our other democratic friends down there a window of time for peace.

We have been assured by the Nicaraguan Resistance that existing funding will carry them well into the month of October. When the first contining resolution for the 6-week period beginning October 1, 1987, comes before the Senate Appropriations Committee at the end of this month, I will support efforts to sustain the Nicaraguan Resistance as the Central American peace negotiations approach the November 7 deadline. Subsequently, those negotiations will influence what Congress provides for Nicaragua in the final appropriations bill for fiscal 1988.●

TAKEOVER BY THE SMITHSONIAN MUSEUM OF THE MUSEUM OF THE AMERICAN INDIAN

● Mr. D'AMATO. Mr. President, I rise today in opposition to legislation to be introduced by my friend, the senior Senator from Hawaii [Mr. INOUYE], proposing a takeover of the Museum of the American Indian [MAI] by the Smithsonian Museum. I have the deepest respect and admiration for Senator INOUYE. However, I am compelled to oppose his legislation that would take an established New York institution to Washington, DC.

Mr. President, for 10 years the Museum of the American Indian has sought a new location. Currently, MAI has display space at 155th Street in Manhattan and storage space in the Bronx. The museum's usable display space amounts to only 40,000 square feet. It is clear that MAI requires more space to adequately display its fabulous collection. However, for years New York's political and cultural leaders have been unable to agree on where MAI should move.

The discord surrounding this issue dissipated when Mayor Koch and I endorsed a plan to move MAI into the U.S. Customs House located in downtown Manhattan. Legislation has been introduced by my senior colleague from New York, Senator MOYNIHAN, to convey the Customs House to MAI. Mayor Koch and I generally support this legislation.

Mr. President, since New York's political leadership has unified behind the plan to find MAI more space, there is no need to consider legislation moving the museum to Washington. It is time for Smithsonian to stop exploiting a New York dispute. It is also time for the board of MAI to reject any plan to leave New York City.

Furthermore, the Smithsonian option is too expensive. The proposed legislation would cost at least $100 million in Federal taxpayer dollars to build a new building on the Mall for MAI. At a time when the Federal Government faces demands to increase spending for housing, AIDS research and health insurance for the elderly, we cannot afford to needlessly spend $100 million.

Mr. President, through my position on the Appropriations Committee I intend to do everything in my power to fight the Smithsonian's hostile takeover of a New York institution. As a Senator from New York, I am obligated to undertake whatever action is necessary to stop outsiders from raiding New York State's cultural resources.●

MICRO-ENTERPRISE LOANS FOR THE POOR ACT

● Mr. D'AMATO. Mr. President, I rise today to cosponsor S. 998, the Micro-Enterprise Loans for the Poor Act, which has been introduced by my distinguished friend and colleague, the senior Senator from Arizona. S. 998 would make small loans available to those who are in most desperate need and who would reap the most substantive benefits from U.S. assistance.

The poor majority in many underdeveloped countries have no prospects for advancement in the future because they do not have access to credit. In order to gain access to credit through normal channels, some form of collateral is usually required. This is impossible for the people at whom this legislation is aimed. If given access to productive credit, those people will, for the first time, have the potential to support themselves while contributing to their respective local economies.

This legislation is particularly attractive because it is available at no additional cost to the American taxpayer. By supplying aid directly to the private sector these moneys will have the chance to make an immediate impact on the lives of the most destitute.

S. 998 would provide $50 million in loans available for fiscal year 1989 strictly for micro- and small-size businesses. It is estimated that over three-quarters of the world's businesses are microenterprises. With the availability of intermediary agencies already in place to execute these small business loans, the costs of administering the loan programs would not constitute a significant drain on aid resources.

Organizations like FINCA and CARE have already demonstrated that programs similar to those pro-

posed by S. 998 can accrue a high percentage of payback on microloans. Countries in which loans have already been available to micro and small businesses have enjoyed an impressive degree of success. These countries include Bangladesh, Indonesia, India, Nepal, Colombia, as well as several other nations that suffer through some of the most devastating poverty in the world. The high percentage of paybacks coupled with the invaluable amount of self-esteem and confidence that these programs instill, make loans to micro and small enterprises under this proposed legislation a priority that must not be ignored.

Millions of people die of hunger and hunger-related illnesses every year. Although direct aid programs have greatly helped this tragedy, a concurrent program to develop small enterprises will have greater long-term success against poverty and hunger. The provision of loans and related services to the very poorest people in the developing nations of the world should be an imperative function of U.S. aid. S. 998 would direct loans to those in the poorest 20 percent of the households in most recipient countries, and by adding the further stipulation that in the least-developed countries, the loans can be made available to the poorest 50 percent. In short, the Micro-Enterprise Loans for the Poor Act represents an excellent means of transforming the lives of some of the world's most impoverished people.

These small loans represent one of the most effective vehicles of foreign aid that the United States has at its disposal. U.S. aid in the form of loans concentrated on the large number of these microenterprises will contribute to the economic well-being of the ailing global community. Let's take full advantage of our resources to help the poorest of the world's poor in the most efficient capacity available. The Micro-Enterprise Loans for the Poor Act offers the ability to do as much as we can with as much that we have. I urge my colleagues to join me as a cosponsor of this legislation.●

SCHOOL DROPOUTS

● Mr. McCONNELL. Mr. President, I want to bring to the attention of the Congress a unique, community-spirited program by Ashland Oil, Inc., of Kentucky. This year the regional advertising theme for Ashland Oil is the problem of school dropouts. Ashland Oil recently announced that they were devoting its entire corporate regional advertising campaign, for the fifth consecutive year, to increasing the quality of education.

The dropout problem is especially severe in Kentucky with 1 out of 3 students in my State dropping out of school before graduating from high school. Almost half of Kentuckians 25 years or older have not completed high school. This, along with Kentucky's high illiteracy rate, contributes to economic and unemployment problems throughout the State. Ashland's program will hit the problem with a series of television and radio commercials which will identify the problem; discuss the consequences of dropping out; encourage parents to help on keeping children in school, and show the benefits of graduating.

In the near future, there will also be outdoor, newspaper and magazine advertising to highlight the problem. In addition, Ashland is sponsoring an awareness building program entitled, "A Day on Campus" which is designed to put elementary through junior high students on a college campus for a day. Other aspects of the campaign on dropouts is a free brochure on the dropout rate and suggestions for alleviating the problem, and a speaker program for schools and civic organizations.

This is a serious commitment on the part of a responsible corporate citizen to identify a program and do something about it. I want to commend Ashland for its initiative again this year and encourage other companies to address community or statewide problems in such a positive manner.●

INFORMED CONSENT: MASSACHUSETTS

● Mr. HUMPHREY. Mr. President, today I would like to insert into the RECORD a letter from the State of Massachusetts in support of my informed consent bill. Miss Canu's letter is one of hundreds of letters that has been sent to my office of women who have been traumatized by abortion.

No matter where you stand on the abortion issue, you must agree that informed consent, which is standard medical procedure, must be applied to termination of pregnancy as well. I urge my distinguished colleagues to support S. 272 and S. 273.

The letter follows:

BROOKLINE, MA,
May 29, 1987.

DEAR SENATOR HUMPHREY: I have founded the Massachusetts Chapter of Feminist for Life because of Pro-life stance. Not only have I suffered a life time of loss of self-esteem because of my history, I have recently lost a 16-year old girl who killed herself because she was not emotionally equipped to deal with the guilt from her abortion.

I have been involved in the Pro-life movement for a mere 3 months. Not only do I receive mail every day from other women, I hear stories from other women who have had complications following abortion. The truth is not given to these women at the abortion clinics.

I might also add that I married my ex-husband because of my anger towards him about an abortion, needless to say, ruining not only my life but his, and the life of our son. I can attest to the fact that the pain never goes away, even after extensive psycho-therapy.

My medication for depression cost $50 a month. I urge women who plan to have abortions to consider the risks involved, what price they will ultimately pay for their self-esteem.

Sincerely,

ROCHEL CANU.●

TRIBUTE TO ST. MARY'S HOSPITAL AND THE SETON BRANCHES

● Mr. D'AMATO. Mr. President, I rise today to commemorate the 130th anniversary of St. Mary's Hospital in Rochester, NY and pay special tribute to the women of Seton who have been indispensable in assisting St. Mary's for the past 82 years.

In September 1857, three Daughters of Charity opened their doors at the corner of West Main and Genesee Streets to care for the victims of the cholera epidemics of 1855 and 1856. From this time through the present, St. Mary's has been providing quality health care for Rochester's community.

Forty-eight years later, the "Seton branches" formed. The "Seton branches" were 12 groups of women who organized in the spirit of the Daughters of Charity to assist St. Mary's by volunteering their services and holding various fundraising activities.

Today, there are more than 60 Seton branches that continue to uphold the the same values and traditions of the three Daughters of Charity and their namesake St. Elizabeth Ann Seton. They are as committed to St. Mary's today as they were in 1905. Their efforts have proven effective and have resulted in over $130,000 to be donated to St. Mary's this year.

I am honored to participate in this year's "Salute to Seton" and recognize the Seton branches for their years of dedicated service to St. Mary's and the people of Rochester.●

NATIONAL HISPANIC HERITAGE WEEK

● Mr. BINGAMAN. Mr. President, I wish to invite the attention of my colleagues to Public Law 90-498, authorizing the President to proclaim the week including September 15 and 16 as "National Hispanic Heritage Week." President Lyndon B. Johnson first made this proclamation in 1968.

It is the tradition of our country to cherish and conserve all the diverse cultures which have contributed to this Nation's greatness. Many of our country's States, particularly in the Southwest, include cities and towns which proudly bear Spanish names—the capital of my home State of New Mexico, Santa Fe, is just one example. Many of these cities and towns were initially developed by Hispanic pioneers. It was the Spanish who were the first Europeans to settle the

region that is now the Southwestern States.

Mr. President, this week as part of "National Hispanic Heritage Week," over 100 Hispanic student leaders representing States from all across the country, will be participating in a "Leadership in Literacy" symposium.

"Leadership in Literacy" is to encourage literacy and leadership in the Hispanic community. By setting up volunteer tutoring programs, Hispanic students hope to curb the increasing drop out rate among their fellow Hispanics. I applaud members of the New Mexico delegation of students, Eloy Martinez, Monica Sanchez, Linda Aragon, Nina Martinez, and Alfredo Ponce. I also commend the unconfirmed delegation members, Donald Gallegos, David Proper, John Martinez, Mary Jo Lujan, Michael Gallegos, and Debra Montoya and their adult escorts Leo Montoya and Edna Gallegos, and the members of all the State delegations for their efforts in moving forward with this initiative.

The problem of illiteracy of the United States has reached epidemic proportions. Such initiatives as "Leadership in Literacy" are giant steps in overcoming this problem. There is, however, more to be done. Here in the Congress we can take steps of our own to change the illiteracy trends. Last March, I introduced the English Proficiency Act of 1987. This legislation focuses on helping adults and out-of-school youth whose native tongue is not English to become literate in English.

There are over 18 million Hispanics in the United States today. They are the fastest growing minority in the country, and the illiteracy rate among them is a startling 54 percent. In New Mexico, 37 percent of the population is Hispanic. According to a recent Commerce Department study in New Mexico, Hispanics represented the highest drop out rate—8.1 percent compared to 5.8 percent of Anglos. These statistics have serious implications for the future of the Hispanic community. The English Proficiency Act would generate some of the funding needed to bring some necessary adult education to the rural areas of the Nation.

I am proud to support the efforts of the "Leadership in Literacy" initiative. I believe that its diligent efforts will help shape the future of the Nation's Hispanic community, and be of enormous benefit to the country as a whole.

We approach the 500th anniversary of the Hispanic presence in America, which began with Christopher Columbus. We also will soon celebrate the 450th anniversary of the great expedition of Francisco Vasquez de Coronado, whose search for the Seven Cities of Cibola led him through Arizona, New Mexico, Texas, Oklahoma, and Kansas. This aspect of the Hispanic heritage I hope to preserve by the enactment of the Coronado National Trail Study Act of 1987, which I introduced this week. I believe that these great events, as well as the many other contributions Hispanics have made to our nation throughout its history deserve the recognition and public awareness "National Hispanic Heritage Week provides".

THE DAVIS-BACON ACT

● Mr. HUMPHREY. Mr. President, enforcement problems associated with the Davis-Bacon Act continue to plague the Federal Government's construction programs despite gradual implementation of the Reagan administration's commonsense regulatory changes.

The Wage Appeals Board [WAB]—a nonstatutory quasi-court located within the Department of Labor—recently issued another baseless opinion expanding the scope of the 56-year-old Davis-Bacon Act. Astonishingly, this decision comes almost simultaneously with a Department of Jusitce decision settling a similar interagency dispute by ruling against the Wage Appeals Board's expansionary proclivities.

INTERAGENCY DISPUTE NO. 1: HUD VERSUS DOL

In October of 1986, the Justice Department was asked by the Secreatry of Housing and Urban Development for an opinion to settle a dispute between the DOL and HUD. Their dispute concerned differing interpretations of section 110 of the Housing and Community Development Act of 1974, the Davis-Bacon wage requirement for urban development action grants [UDAG] and community development block grants [CDBG].

Since enactment of the two programs, HUD has made numerous grants that consistently and clearly exempted designated private construction work from the ambit of the Davis-Bacon Act. This exempt work was that part of a UDAG or CDBG project that resulted from the use of Federal funds, but not actually utilizing Federal dollars in the construction of the end product.

But in late 1985, the building trades appealed a HUD-UDAG grant made to the city of Muskogee, OK, that explicitly exempted the construction of a new mall—built with private funds—from the requirements of the Davis-Bacon Act. Davis-Bacon wages were properly required for site clearing and other construction performed with Federal funds. Dissatisfied, the building trades wanted the entire package to be covered under the Davis-Bacon Act. They brought the issue before the WAB.

The Wage Appeals Board, that impartial dispenser of justice, held in December of 1985 that all construction resulting from a UDAG grant, regardless of the funding source, was indeed covered by the Davis-Bacon Act. However, the Board wisely chose to avoid a court challenge to this unsupportable decision by not applying the underlying holding to the city of Muskogee's UDAG grant. HUD continued to hold to its original interpretation and asked the Justice Department to settle the dispute.

In August of 1987, the Department of Justice rejected the Wage Appeals Board's decision and upheld HUD's interpretation of the Housing Act: Davis-Bacon wage rates are inapplicable to private construction projects financed without Federal funds, even though the project was made possible by, and in conjunction with, a UDAG or CDBG grant.

INTERAGENCY DISPUTE NO. 2: DOL VERSUS GSA

In June of this year, the Wage Appeals Board issued another expansionary decision over a similar dispute with the General Services Administration [GSA]. The Board ruled that a GSA contract to lease a building—not yet constructed—for a Veterans' Administration clinic required the payment of Davis-Bacon wage rates. GSA has been leasing privately owned and constructed buildings for Government use for 20 years and this is the first attempt by the Wage Appeals Board to change their modus operandi.

GSA has announced that it will follow the example of HUD and appeal the WAB holding to the Justice Department on the same basis that HUD appealed the first ruling.

Wage Appeals Board decisions—frequently crafted for the sole purpose of expanding the scope of the Davis-Bacon Act—often cost the taxpayers dearly. Had the city of Muskogee decision not been rejected by the Department of Justice, Davis-Bacon wage requirements would certainly drive all private sector participation from UDAG and CDBG projects. Construction costs would increase accordingly or projects would never get off the ground.

The Secretary of Labor should give serious thought to abolishing the Wage Appeals Board altogether unless decisions of this type stop.

Mr. President, I ask that two editorials be printed in the RECORD. The first editorial, from the New York Times, is supportive of the Justice Department's intervention; the second editorial, from the Engineering News-Record sheds further light on the latest interagency controversy between GSA and DOL/WAB.

The editorials follow:

A WELCOME ATTACK ON DAVIS-BACON

The Davis-Bacon Act was conceived during the Depression as a way to protect Northern construction workers, most of them white, from job competition on Federal projects with Southern blacks who would work for less money. The law is still on the

books, 54 years later, inflating the cost of Government construction and sticking taxpayers for the gravy. Now, however, the Justice Department has issued a welcome ruling that may limit the scope of Davis-Bacon.

The ruling says that contractors on federally assisted community development projects must pay "prevailing wages"—the basic Davis-Bacon requirement—only where Federal funds are used for actual construction. Prevailing wages need not be paid when the funds go for such things as land purchases or fees for architects or engineers.

Samuel Pierce, the Secretary of Housing and Urban Development, who sought the ruling, said it could reduce the cost of projects built with Federal community development funds by as much as 25 percent. The Government last year distributed $3.3 billion of such funds to about 5,700 local government entities for use in a wide range of programs for people of low and moderate incomes.

To some extent, the Justice Department ruling is the product of legal sophistry. Purchasing land and paying architects and engineers are necessary to construction, if not necessarily part of it. But sophistry is nothing new where Davis-Bacon is concerned. Over the years, Labor Department interpretations have made the term "prevailing wages" synonymous with "union wages," even where non-union construction is common.

The result has been to discourage nonunion contractors from bidding on Government projects and to inflate the cost of Government construction. The Congressional Budget Office estimated last year that Davis-Bacon adds $900 million a year to Federal building costs.

A spokesman for the A.F.L.-C.I.O. condemned the new Justice Department ruling and said the organization would try to overturn it in court. That was to be expected. But Davis-Bacon is the most egregious kind of special-interest legislation. The Justice Department's effort to narrow its scope deserves to succeed.

STOP STRETCHING THE DAVIS-BACON ACT

The ruling by the Labor Dept.'s Wage Appeals Board that the Davis-Bacon Act applies to the construction of a building owned by a private developer and leased to a federal agency is preposterous (see p. 11). This administrative tribunal is bootstrapping itself up, using its 1985 ruling in the *Fort Drum* case to expand the scope of the federal prevailing-wage law.

Rarely are federal statutes argued for as long as the Davis-Bacon Act. The Depression-era law means a lot of different things to different people and organizations, ranging from protection for local construction workers from fly-by-night contractors on federally funded construction projects, to protection for unions against competition from nonunion contractors. But any interpretation or application of the act should not depend on which camp a tribunal may favor, but on the language of the law itself and the intent of Congress in passing it.

The Davis-Bacon Act by its terms applies to construction performed with federal funds. The Crown Point outpatient clinic does not fall in that category. Neither, for that matter, does the off-base military housing to be leased to the military at Fort Drum. The only situation involving private construction that should be brought within the purview of the federal prevailing-wage law is a project that has no possible commercial application and whose private ownership is clearly arranged to avoid the wage law requirements. If the Labor Dept. continues to ignore the clear dictates of the Davis-Bacon Act and expand it by usurping legislative power, we suggest that more federal agencies seek redress from the Dept. of Justice.●

BUDGET RECONCILIATION

● Mr. BOSCHWITZ, Mr. President, I want to bring to the attention of Senators, especially Senators who represent agricultural States, a matter regarding budget reconciliation.

First, let me acknowledge that given the tentative state of the whole budget process it may be premature to talk about any reconciliation matter. However, if the Agriculture Committee does move to consider reconciliation instructions, there is one item called 0/92 which will probably be adopted. 0/92 allows farmers to collect 92 percent of their payments if they plant none of their acres.

Our problem arises from the fact that the winter wheat planting season has already begun in the South and will soon be in full swing across the country. If we do not adopt a 0/92 provision soon, savings we could have achieved in fiscal year 1988 and fiscal year 1989 will be lost. I estimate that the lost savings could run as high as $80 to $100 million.

The other body considers this to be a very serious matter and passed H.R. 3093 before the August recess allowing 0/92 for producers of winter wheat and feed grains. The Senate should consider taking up the House bill and moving ahead with this cost-saving item for the budget and for farmers.

The 1985 farm bill contained what is known as 50/92. This provision would allow farmers to plant only 50 percent of their permitted acres and receive 92 percent of their deficiency payments. The 50/92 option was not used widely by farmers because once they have the equipment and are geared up with supplies to farm, it is economical to go ahead and farm all the acreage allowed rather than half.

The 0/92 would modify the 50/92 provision so that producers could idle all of their land and get 92 percent of their payments in 1987. If approved, this provision would discontinue our present system of forcing farmers to plant in order to get their payments.

I would like to emphasize that 0/92 would be a totally voluntary option on the part of producers. The normal farm programs would not change at all. The expansion of 50/92 would give financially hard-pressed farmers a chance to get back on their feet—time to reorganize their affairs.

For the vast majority of producers 0/92 would not be a viable option. Some agricultural groups and agribusinesses have told me that they fear 0/92 because large acreages might be taken out of production while the budget people at CBO and USDA tell me the acreage enrolled would be low. Because of the late date and the fact that 0/92 does not pencil for most producers, I am inclined to believe that land enrolled would not be more than 3 million acres.

The reason participation would be low is because the regular farm program is more profitable. Independent analysis of 0/92 indicate that a wheat farmer would have to have variable costs of production above $80 per acre and yields around 30 bushels per acre in order to use 0/92. Most producers have costs that are lower and yields that are higher. However, for producers who might be in financial trouble or on marginal land—0/92 would be perfect. It might also give some relief to the Farm Credit System if we stopped forcing their clients to continue losing money on their crops.

Confusion has arisen regarding just what 0/92 means. Some have even dubbed it decoupling which is a buzzword for the farm policy proposal put forth by Senator BOREN and myself. Let me assure Senators that 0/92 is not Boschwitz-Boren style decoupling. Briefly, I will explain exactly how 0/92 would work.

The provision would remove the requirement to plant at least 50 percent of the program acreage to receive 92 percent of the deficiency payments. Producers could plant as much of their permitted acres as they like—or none.

Payments would be known in advance by producers. The payment rate would be based on the projected deficiency payment rate at the time of sign up.

The interests of tenant and sharecropper would be protected in cases where landlords might displace the tenant or sharecropper, in order to participate in the program.

Although I believe we ought to work toward letting the market decide all planting decisions, I realize that minor crops could face difficulty if large acreage were opened up to compete against them right away. Any 0/92 provision adopted would probably not allow for the planting of nonprogram crops.

The interests of local communities and agribusiness would be protected by requiring the Secretary of Agriculture to consider any adverse effects that may accrue to the local community by unexpected high participation. If local economies would be harmed the Secretary could limit participation just as is done with the Conservation Reserve Program.

It may be fairly asked why I support legislation that is far from the decoupling idea proposed by Senator BOREN

and myself, and that by my own admittance will not be used that heavily?

First and most important, it is good policy—it makes common sense. Why in the world should we tell a farmer that he or she must plant to get payments when such a farmer would be better off just to leave the land idle? Does it make sense to, on the one hand, spend billions to make our products competitive while supporting farm income and on the other hand force farmers to keep producing the stuff when they may voluntarily quit if given the option? I say no and bet that most farmers would too.

Second, CBO estimates that it will save about $710 million over the next 3 fiscal years. The Agriculture Committee has instructions to save $5.8 billion over the same period. Savings of $710 million are too large to ignore.

I emphasize the timeliness of this option because if we delay it will be too late for winter wheat production. Farmers are already prepard to go to the field. Personally, I can see no sense in bypassing savings achieved by a policy supported out in the countryside. It will be very difficult to explain to farmers why we have to cut their target prices, increase the unpaid acreage reduction percent, or cut payment limitations to save money when we could have passed 0/92 to save a big chunk of money now.

I ask that a letter that I received from Congressman GLICKMAN on this subject be printed in the RECORD.

The letter follows:

COMMITTEE ON AGRICULTURE, SUBCOMMITTEE ON WHEAT, SOYBEANS, AND FEED GRAINS, ROOM 1301, LONGWORTH HOUSE OFFICE BUILDING, WASHINGTON, DC,
September 4, 1987.

Senator RUDY BOSCHWITZ,
U.S. Senate,
Washington, DC.

DEAR RUDY: On August 7, the House gave unanimous approval to H.R. 3093, the Optional Acreage Diversion Act of 1987. In short, the bill amends the 1988 wheat and feed grains programs to permit producers a 0/92 option by which they can receive as much as 92% of their expected deficiency payment for that crop if they agree to devote their permitted wheat and feed grains acreage to conserving uses.

Although not every producer will take advantage of this alternative, farmers with high variable costs of production, with high production risks, with weather-related problems, or who have very high debt loads and who are seeking to avoid new expenses may find it attractive. The bill will help reduce surpluses and it saves the Treasury money. While some concerns have been raised about the bill's effects on agribusiness, it contains a directive to the Secretary to implement the program to minimize possible negative ramifications.

Those of us in the House acted quickly in the days before the Congress began the August break hoping we could secure approval of the legislation before farmers made other planting commitments for their 1988 crops. Unless final action comes soon, I am concerned that for many farmers who might otherwise use it, 0/92 will simply not be a practical possibility.

A concern I often hear from my producers is that they want Congress to make program options available in time to be real options, not after the fact as too often occurs. We are quickly approaching the time when, for all practical purposes, 0/92 will not be a viable option for producers; so I am writing you to urge swift action on this measure.

I am enclosing a summary of the provisions of H.R. 3093 as it passed the House and, in case you missed it, an editorial which appeared in the Washington Post on the legislation. If you have any questions, I would welcome talking with you about the bill or your staff can call Greg Frazier at 5-1494.

With best personal regards, I am,
Sincerely,

DAN GLICKMAN,
Chairman, Subcommittee on Wheat, Soybeans, and Feed Grains.

[From the Washington Post, Aug. 18, 1987]

FIXING FARM SUPPORTS

Farmers now get two layers of support from the government. First is a loan: a farmer can turn his crop over to the government if the market price is below the so-called loan rate. Second is an outright income supplement or deficiency payment, making up the difference between the market price or loan rate—whatever the farmer gets for his crop—and a target price or income goal.

The House, as it was leaving town two weeks ago, sent to the Senate with little debate a bill making an important change in this second kind of subsidy. Currently a farmer must plant to earn it: the system encourages production when overproduction is the problem. Under the bill, by contrast, wheat and corn farmers, the two largest subsidized classes, could earn most of their traditional deficiency payments if they promised *not* to plant.

The legislation offered by Rep. Dan Glickman, chairman of the House grain subcommittee, is a fairly simple and straightforward effort to nudge down production and costs and thereby help in a modest and traditional way with both crop surpluses and the budget deficit. But it also exists in a broader context.

The present two-tier system of supports was developed in the 1960s and 1970s. It was an attempt to separate income support from price support, so that in theory farm income could be kept comfortably high and farm prices competitively low at the same time. Now the thinking is that income support should be divorced from production decisions as well, so that the support system does not perpetuate the problem it is meant to solve.

The administration has been pushing this "decoupling" idea as a way to reduce support levels and costs. Right now the bigger a farmer is, the more income support he gets; the program is upside down. The administration suggests, for free-market and fiscal as well as fairness reasons, basing income supports instead on some standard of need. Those who want to preserve the existing support levels aren't much enamored of this idea; among many other things they object that some of the money farmers get is welfare.

There is a middle school of thought that favors (1) divorcing income support from production levels, then (2) phasing down the support levels. The purpose would be not just to stop subsidizing surpluses but to give farmers time to adjust by either leaving the land or turning to other crops.

It's a long way from Mr. Glickman's constructive bill, which is only voluntary, to such a transformation of the support programs, and he didn't offer it with that as a goal. But it does take Congress into the territory. The farm programs need some work, and this is an interesting path.●

WINNING ESSAY ON CONSTITUTION

● Mr. NICKLES. Mr. President, in honor of the bicentennial of the U.S. Constitution, I sponsored an essay contest in my State for high school students. The goal was to try to interest 10th and 11th grade students in taking some time to study and examine for themselves the importance of the Constitution in their daily lives. I would like to announce the results of this essay contest.

A winner was selected from each of the State's six congressional districts and from those, the statewide winner was selected. The district winners are: Tonya Brown, Skiatook, First District; Mark Dean, Okemah, Second District; Traci Gunn, Wister, Third District; Scott Shellhorse, Tuttle, Fourth District; Nichole Clark, Edmond, Fifth District; and Mary Reneau, Medford, Sixth District.

The statewide winner is Mark Dean of Okemah. I am very proud of Mark for his efforts and for all of the other students for taking the time to reflect and write about surely one of the most important documents to American citizens.

Mr. President, I submit for the RECORD the winning essay by Mark Dean, entitled, "Why I Believe the United States Constitution Is an Important Document Today." It is an outstanding essay on the Constitution which I commend to my colleagues.

The essay follows:

WHY I BELIEVE THE U.S. CONSTITUTION IS AN IMPORTANT DOCUMENT TODAY

(By Mark Dean)

In the National Archives Building in Washington, D.C., there is a piece of parchment that belongs to all the people of the United States. This parchment is so precious that it is sealed in a glass case filled with helium and is guarded at all times. This document is the Constitution of the United States of America.

The Constitution is the supreme law of the land. It establishes the form of the United States government and the rights and liberties of the American people. I believe in my country and in my forefathers and this is why I believe that the United States Constitution is an important document today.

Before the Constitution was created, some states paid no attention to the laws and openly opposed the rights of citizens. They disregarded jury trials and sentenced men to death without a trial. Neighboring states raised tariff barriers against each other. Each state acted like an independent country and ran its own affairs as they saw fit with no concern for the broad purposes of

the republic. Many problems arose that no one could solve, and, worst of all, some men began to think once again of taking up arms in order to solve their problems. Without our Constitution this could possibly all happen again.

Our forefathers, George Washington, Benjamin Franklin, James Madison, Alexander Hamilton and many more, had the expressed determination to "form", "establish", "insure", "provide", "promote", and "secure" a plan of government whereby each of these special objectives were all directed to the supreme aim to "secure the Blessings of Liberty to ourselves and our Posterity." These six major goals set forth the purpose of a free people in a new land.

The Constitution made the United States an undivided nation. It is the shield of democracy under which Americans govern themselves as a free people.

The Constitution establishes the federal system of separating powers between the national government and the states' governments. It divides the powers of the national government among the executive, legislative, and judicial branches.

The Constitution has continued to develop in response to the demands of an ever growing society. Yet the spirit and wording of the Constitution have remained constant. Men of each generation have been able to apply its provisions to their own problems in ways that seem reasonable to them.

The Constitution protects the rights of each one of us. It was designed to serve the interests of all the people—rich and poor, Northerners, Southerners, farmers, workers, and businessmen. It establishes the basic freedom of Americans, such as freedom of speech, of the press, of religion, of assembly and the right to trial by jury.

The Constitution has played a major role in making this a greater and better America. The great principles of the Constitution have been in tune with the beliefs and hopes of an expanding democracy for 200 years.

The United States Constitution is without a doubt a very important document today. Without it America could very well destroy itself. It could become a divided nation and the republic could cease to exist.

I am proud of my country, of my forefathers, and of my Constitution. I respect them and I am proud to be an American and abide by the United States Constitution.●

DON'T RAISE THE MINIMUM WAGE

● Mr. BOSCHWITZ. Mr. President, I rise today to alert my colleagues to an article from Fortune magazine by Jeffrey Campbell, executive vice president of Pillsbury and chairman of its restaurant group. He opposes raising the minimum wage and offers very interesting alternatives.

Mr. Campbell points out that the Minimum Wage Study Commission in 1981 reported that each 10 percent increase in wages reduces teenage employment of 0.5 to 1.5 percent; a loss of 90,000 jobs in today's job market. The article points out that linking the minimum wage and the average nonsupervisory hourly wage could raise the minimum to over $7 per hour by 1995. He also reminds us of the "ripple effect," from demands to maintain the salary difference between minimum wage employees and other employees.

Mr. Campbell agrees that trying to support a family on today's minimum wage is a disgrace. But who are the minimum wage workers? According to Mr. Campbell a third are teenagers, 59 percent are under 25, and two-thirds live with a relative who has a job.

To mandate raises for everyone, Mr. Campbell feels, is an inappropriate way to help a distinct minority of minimum wage workers who are the head of households. As one alternative Mr. Campbell suggests that the Federal earned income tax credit, which currently tops out at $851, be increased.

To help those under 25 find employment in the fast-food industry Mr. Campbell would initiate a training wage. The training wage would apply to any new employee in the fast-food industry. The goal of this program is to reward tenure and experience through wage increases based on productivity.

I encourage my colleagues to read this article and urge a careful review of the history of the effects of raising the minimum wage.

Mr. President, I respectfully request that the article by Mr. Campbell be printed in the RECORD.

The article follows:

DON'T RAISE THE MINIMUM WAGE

A specter is haunting America. An underclass of unemployable young people, particularly minority youth, is expanding steadily, abetted by drug abuse, adolescent pregnancy, and illiteracy. This may be the single greatest threat to the competitiveness of American business. These teens need jobs, and before that, job skills. A higher minimum wage, as proposed in the well-intentioned Kennedy-Hawkins bill now before Congress, would not help them much. And it could even hurt.

The bill's laudable objective is to reduce poverty by bringing low-paid workers a higher standard of living. Unfortunately, the problem and the solution will pass like ships in the night. Virtually every economist who has studied the issue agrees that a minimum wage increase would lead to a loss of jobs. According to studies coordinated by the Minimum Wage Study Commission in 1981, each 10% increase reduces teenage employment by 0.5% to 1.5%—a loss of up to 90,000 jobs in today's job market.

The last federal minimum wage hike was a four-step, 46% increase, from $2.30 per hour in 1977 to $3.35 per hour in 1981, the current level. The Kennedy-Hawkins bill would increase the hourly wage another 39%, from $3.35 to $4.65, within 25 months. Thereafter, the minimum would automatically be raised to 50% of the average nonsupervisory private hourly wage.

One economist estimates that the federal minimum wage linked to the Kennedy-Hawkins index could top $7 per hour in 1995. There would be an additional ripple effect as well. Employees earning more than the minimum wage would expect—and probably get—raises to maintain their historic differentials. In fact, such increases are built into some labor contracts.

Proponents of raising the minimum wage argue that it is a national disgrace for a person to work 40 hours and earn only $134 weekly, $6,968 a year. This is a disgrace if the wage earner is attempting to support a family solely on this income. In this context, it is extremely important to understand the makeup of today's minimum-wage work force. More than a third are teenagers, and 59% are under 25. Many are students, some of whom are technically classified in government statistics as heads of households. Two thirds are living with a relative who also has a job. Relatively few work 40 hours weekly, all year, for the minimum wage.

A mandated raise for everyone is an inappropriate way to help the distinct minority whose sole livelihood is the minimum wage and public assistance. The most efficient solution would be targeted assistance for these people. The working poor can best be helped by raising the federal earned income tax credit—the negative income tax that now tops out at $851.

Another alternative to Kennedy-Hawkins deserves careful study: a training wage. The Administration has long advocated a lower minimum wage for teenagers. The training wage would be lower too, but it would apply to any new worker, regardless of age. After several months' training, the new worker's pay would be increased to a level that would reflect greater productivity. High turnover is one of the fast-food industry's big problems. The training wage would reward tenure and experience.

One big thing many young people need is what could be called general job skills—including punctuality, teamwork, initiative, personal communication, and the ability to take direction and take responsibility for one's actions. The companies in Pillsbury's restaurant group teach those things—what we call the invisible curriculum—along with making hamburgers and delivering pizza. Our restaurants are in every kind of neighborhood across the nation, from affluent suburbs to impoverished ghettos. We are in direct contact with millions of young people and employ hundreds of thousands every year. We recognize that the welfare of American youth is critical to our own future.

We have a long way to go before we will be satisfied with our job-training efforts. But we believe we can do the job more efficiently than government. If there are fewer jobs—in our restaurants and across the rest of the economy—the government will have to assume a larger and more expensive share of the burden for vocational training.

Fast-food jobs are often disparagingly described as dead ends. We do not buy that. To us they can be a very large port of entry for disadvantaged young people into the mainstream of the American economy. Our young workers can take the job skills they learn with us into any kind of work. They can also stay with us and get promoted into good jobs in a dynamic business. A lot of our managers started in hourly paid jobs. Two regional vice presidents in our Burger King division rose from jobs behind the broiler without college degrees.

We do not want to slash jobs or reduce our job-training-role. But ours is a highly competitive business. If Kennedy-Hawkins passes, we would have little leeway to pass along higher wage costs in the form of higher prices. We are constantly looking for ways to increase productivity—which often means serving more customers with fewer workers. Higher wages will only accelerate that activity.

Poverty cannot be cured by higher paychecks for some citizens and unemployment

for others. Employment should be the goal of federal policy, not raising the price of employees beyond their productivity level with resulting job loss.●

BICENTENNIAL COMMUNITIES IN THE HOOSIER STATE

● Mr. LUGAR. Mr. President, as I watched over the grand celebration of the bicentennial of our Constitution in which we all took part earlier this week, I reflected upon all of the local celebrations that were occurring simultaneously across the Nation. Today, I wish to commend those communities in my home State of Indiana which have recognized the importance of this 200th anniversary and have gone to great lengths to plan stimulating, educational events throughout the year.

Forty-nine Hoosier communities from all areas of the State have been designated "Bicentennial Communities" by the National Commission on the Bicentennial of the United States Constitution. These localities have each established a committee, representing all facets of the community, which, in turn, has created a plan for educating its citizenry on the meaning and significance of the Constitution. Activities range from a local production of the musical "1776," and essay and poster contests for the schoolchildren, to "Bicentennial Moments" aired on local radio and television stations.

Earlier this year, Senator QUAYLE and I appointed 10 members—one from each congressional district—to a State advisory board which will oversee a statewide student competition on the Constitution and the bill of rights. The competition begins with a 6-week study of instructional materials on the Constitution. It culminates with participation by the students in a debate on a fundamental constitutional issue before a panel of judges selected from the various communities. Eventually the local competitions will lead into a State-level debate, determining who will represent Indiana in the national competition.

I am heartened by the excitement generated in the Hoosier State over the chance to study and celebrate this venerable document. I think the statewide competition and other planned activities too numerous to mention provide excellent opportunities for our youth, and our adult population as well, to gain a greater understanding of the principles of democracy. Indiana and the Nation as a whole will ultimately benefit from a new generation of well-informed citizens who will continue to ensure the perpetuation of our constitutional system.

Again, I commend the 49 "Bicentennial Communities" Indiana currently boasts, and I encourage other towns in my great State and across the country to join in this important celebration.●

THE CALENDAR

Mr. BYRD. I would like to ask at this time if the acting Republican leader is prepared to take up Calendar Order Nos. 309, 310, 313, and 319.

Mr. QUAYLE. I will tell the majority leader I do not have 309 on my list. I have 310, 313, and 319.

Mr. BYRD. Mr. President, I thank my friend, Senator QUAYLE.

I ask unanimous consent, Mr. President, that the Senate proceed to the consideration of those three measures, 310, 313, 319 seriatim.

The PRESIDING OFFICER. Without objection, it is so ordered.

USE AND DISTRIBUTION OF CERTAIN INDIAN JUDGMENT FUNDS

The Senate proceeded to consider the bill (H.R. 1567) to provide for the use and distribution of funds awarded to the Cow Creek Band of Umpqua Tribe of Indians in U.S. Claims Court docket numbered 53-81L, and for other purposes, which had been reported from the Select Committee on Indian Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

That this Act may be cited as the "Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987".

SEC. 2. DEFINITIONS.

For the purposes of this Act—

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "tribe" means the Cow Creek Band of Umpqua Tribe of Indians, which was extended Federal recognition by the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712, et seq.).

(3) The term "tribal member" means any individual who is a member of the Cow Creek Band of Umpqua Tribe of Indians within the meaning of section 5 of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712c), as amended by section 5 of this Act.

(4) The term "tribe's governing body" means the governing body as determined by the tribe's governing documents.

(5) The term "tribe's governing documents" means either the 'By-Laws of Cow Creek Band of Umpqua Tribe of Indians' which bear an 'approved' date of '9-10-78' or those bylaws as amended or revised or any subsequent final governing document adopted pursuant to section 4 of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712b), as amended by section 7 of this Act.

(6) The term "tribal council" means the general membership of the Cow Creek Band of Umpqua Tribe of Indians convened in a meeting open to all tribal members.

(7) The term "tribal elder" means any tribal member who reached 50 years of age on or before December 31, 1985 and whose name appears on the list compiled pursuant to 4(b)(1)(A).

SEC. 3. JUDGMENT DISTRIBUTION PLAN.

Notwithstanding Public Law 93-134 (25 U.S.C. 1401, et seq.), or any plan prepared or promulgated by the Secretary pursuant to such Act, the judgment funds awarded in United States Claims Court docket numbered 53-81L shall be distributed and used in the manner provided in this Act.

SEC. 4. DISTRIBUTION AND USE OF FUNDS.

(a) PRINCIPAL PRESERVED; NO PER CAPITA PAYMENTS.—(1) The total judgment fund of $1,500,000, less attorney's fees and loan with the Bureau of Indian Affairs for expert witness testimony during the land claims case, shall be set aside as the principal from which programs under this Act will be funded. Only the interest earned on this principal may be used to fund such programs. There will be no per capita distribution of any funds, other than as specified in this Act.

(2) The Secretary shall—

(A) maintain the judgment fund in an interest-bearing account in trust for the tribe; and

(B) shall disburse funds as provided in this Act within thirty days of receipt by the Portland Area Director, Bureau of Indian Affairs, of a request by the tribe's governing body for disbursement of funds.

(b) ELDERLY ASSISTANCE PROGRAM.—(1) From the principal, the Secretary shall set aside the sum of $500,000 for an Elderly Assistance Program. The Secretary shall provide a one-time-only payment of $5,000 to each tribal elder within thirty days after the tribe's governing body—

(A) has compiled and reviewed for accuracy a list of all tribal members who were 50 years of age or older as of December 31, 1985; and

(B) has made a request for disbursement of judgment funds for the Elderly Assistance Program pursuant to subsection (a) of this section.

(2) Payments of $5,000 to tribal elders shall be made—

(A) to tribal elders by age in descending order, beginning with the oldest tribal elder, until the interest accumulated for one year on the $500,000 has been depleted below the sum of $5,000: Provided, That any interest remaining shall carry over to the following year for distribution hereunder in the next $5,000 payment;

(B) on or before January 1 of succeeding years, and will continue to be made to tribal elders in descending order by age until the interest earned in such year on the $500,000 has been depleted below the sum of $5,000: Provided, That any interest remaining shall carry over to the following year for distribution hereunder in the next $5,000 payment; and

(C) each year until every individual eligible for payment under this subsection has received a one-time-only payment of $5,000: Provided, That when all payments have been completed, the principal sum of $500,000 will be distributed to other tribal programs as provided in this Act and any remaining interest will be distributed to other tribal programs as determined by the tribe's governing body.

(3) If any tribal member eligible for an elderly assistance payment should die before receiving such payment, the money which would have been paid to that individual will be returned to the Elderly Assistance Program fund for distribution in accordance with this section.

(c) HIGHER EDUCATION AND VOCATIONAL TRAINING PROGRAM.—(1) From the principal, the Secretary shall set aside the sum of $100,000 for a Higher Education and Vocational Training Program. Interest earned on such sum shall be disbursed annually in a lump sum to the tribe and will be utilized to

provide scholarships to tribal members pursuing college, university, or professional education or training. Tribal members seeking vocational training also will be funded from this program, although adult vocational training funding available through a contract with the Bureau of Indian Affairs will be utilized first if an individual is eligible and there is sufficient funding in such program.

(2) When the Elderly Assistance Program under subsection (b) has been completed, the principal funding for the higher education and vocational training program shall be increased to $250,000.

(d) HOUSING ASSISTANCE PROGRAM.—(1) From the principal, the Secretary shall set aside the sum of $100,000 for a Housing Assistance Program for tribal members. Interest earned on such sum shall be disbursed annually in a lump sum to the tribe and may be added to any existing tribal housing improvement programs to supplement them or it may be used in a separate Housing Assistance Program to be established by the tribe's governing body. Such funding may be used for—

(A) rehabilitation of existing homes;

(B) emergency repairs to existing homes;

(C) down payments on new or previously occupied homes; and

(D) if sufficient funding is available in a given year, for purchase or construction of new homes.

(2) When the Elderly Assistance Program under subsection (b) has been completed, the principal funding for the housing assistance program shall be increased to $250,000.

(e) ECONOMIC DEVELOPMENT AND TRIBAL CENTER.—(1) From the principal, the Secretary shall set aside the sum of $250,000 for economic development and, if other funding is not available or not adequate, for the construction and maintenance of a tribal center. Interest earned on such sum shall be disbursed annually in a lump sum to the tribe and may be used for—

(A) land acquisition for business or other activities which would benefit the tribe economically or provide employment for tribal members: Provided, That at least 50 per centum of all individuals employed in a tribally operated business acquired or operated under this subsection shall be tribal members or their spouses as available and qualified: Provided further, That as new positions open or existing ones are vacated, preference will be given to tribal members or their spouses, but if insufficient numbers of qualified tribal members or their spouses are available to fill at least 50 per centum of the positions offered, nontribal members may be considered for employment;

(B) business development for the tribe, including collateralization of loans for the purchase or operation of businesses, matching funds for economic development grants, joint venture partnerships, and other similar ventures which can be expected to produce profits for the tribe or to employ tribal members;

(C) reservation activities, including forest management, wildlife management and enhancement of wildlife habitats, stream enhancement, and development of recreational areas. The tribe's governing body shall determine what reservation activities will be funded from economic development funds under this subparagraph; or

(D) construction, support, or maintenance of a tribal center.

(2) When the Elderly Assistance Program under subsection (b) has been completed, the principal funding available for economic development and tribal center shall be increased to $400,000.

(f) MISCELLANEOUS TRIBAL ACTIVITIES.—(1) From the principal, the Secretary shall set aside the sum of $50,000 for miscellaneous tribal activities as determined by the tribe's governing body. Interest earned on such sum shall be disbursed annually in a lump sum to the tribe and may be used for—

(A) operating costs of the tribe's governing body, including travel, telephone, and other expenses incurred in the conduct of the tribe's affairs;

(B) legal fees incurred in the conduct of tribal affairs, tribal businesses or other tribal activities, recommended by the tribe's governing body and approved by the tribal council; or

(C) repayment to the Secretary of any funds provided by the Secretary under Bureau of Indian Affairs Contract Numbered POOC14207638.

(2) When the Elderly Assistance Program under subsection (b) has been completed, the principal funding for miscellaneous tribal activities shall be increased to $100,000.

(g) EVERGREEN PROPERTY; COLLATERALIZATION OF LOAN WITH BUREAU OF INDIAN AFFAIRS.—(1) From the principal, the Secretary shall set aside the sum of $315,000 as collateral on the property known as Evergreen. The interest from such amount shall be disbursed annually in a lump sum to the tribe and shall be utilized for payments on the loan property and for maintenance and upgrade of such property. If the tribe's governing body determines that the interest and income together are sufficient to pay off the loan more quickly, it may commit the full interest from $315,000 to repayment of the loan until such time as loan payments are completed or the income from the property is sufficient to complete the loan payments.

(2) When the loan has been paid or the income from the property is sufficient to pay the loan, the principal amount of $315,000 and any remaining interest generated from such sum shall be redistributed to the Housing Assistance Program, Higher Education and Vocational Training Program, and Economic Development and Tribal Center Program established under this section in such proportions as the tribe's governing body determines to be appropriate.

(h) GENERAL CONDITIONS.—The following conditions will apply to the management and use of the judgment funds by the tribe's governing body:

(1) No amount greater than 10 per centum of the interest earned on the principal may be used for the administrative costs of any of the above programs, except as provided in paragraph (2).

(2) No service area is implied or imposed under any program under this Act. If the costs of administering any program under this Act for the benefit of a tribal member living outside the tribe's Indian health service area are greater than 10 per centum of the interest earned thereon, the tribe's governing body may authorize the expenditure of such funds for that program, but in carrying out the program shall give priority to individuals within the tribe's Indian health service area.

(3) The tribe's governing body may at any time after enactment of this Act declare a dividend to tribal members from the profits from any business enterprise of the tribe. Prior to declaring or distributing dividends, however, the tribe's governing body must first take into consideration the effect of such declaration or distribution of dividends on future operating costs and proposed business expansions. Profits from business enterprises may also be distributed back into any of the programs established under this section provided that future operating costs and proposed expansion costs are first set aside. Any such distribution back into the program under this Act shall be proportional to the percentage of principal then being allocated hereunder.

(4) Notwithstanding any other provisions of this Act, interest accrued on the principal prior to enactment of this Act shall as of the date of this Act be distributed under the tribal programs described in section 4 of this Act.

(5) The tribe's governing body shall adopt and publish in a publication of general circulation regulations which provide standards for the participation of individuals who are eligible for programs established pursuant to subsections (c) and (d) of this section.

(6) Benefits received pursuant to this Act shall be considered supplementary to existing Federal programs and their existence shall not be used by any Federal agency as a basis to deny eligibility in whole or in part for existing Federal programs.

(7) Any individual who feels he or she has been unfairly denied the right to take part in any program under subsections (b), (c), or (d) of this section may appeal to the Secretary. The Secretary shall provide payments pursuant to this section to any individual who the Secretary determines, after notice and hearing, has been unfairly denied the right to take part in such program.

(8) Notwithstanding any other provisions of this Act, no funds shall be disbursed pursuant to subsections (c) or (d) of this section until one year after enactment of this Act.

(i)(1) Any portion of the principal set aside under subsection (a) which remains after the allocations of the principal required under subsections (b), (c), (d), (e), and (f) have been made shall be allocated among the Housing Assistance Program, the Higher Education and Vocational Training Program, and the Economic Development and Tribal Center Program established under this section in such proportions as the tribe's governing body determines to be appropriate.

(2) If the total amount of the principal set aside under subsection (a) after amounts sufficient to pay attorney's fees and the loan described in subsection (a) have been deducted is insufficient to make all of the allocations of the principal required under subsections (b), (c), (d), (e), and (f), the portion of the principal which is required to be allocated to the purposes provided in subsections (c), (d), (e), and (f) shall be reduced in such proportions as the tribe's governing body determines to be appropriate.

SEC. 5. MEMBERSHIP ROLLS.

(a) Section 5 of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712c) is amended to read as follows:

"SEC. 5. TRIBAL MEMBERSHIP.

"(a) Until such time as the Secretary of the Interior publishes a tribal membership roll as mandated in subsection (b) of this section, the membership of the Cow Creek Band of Umpqua Tribe of Indians shall consist of all persons listed in the official tribal roll approved on September 13, 1980, by the tribe's Board of Directors, and their descendants. Following publication by the Secretary of the tribal membership roll mandated in subsection (b) of this section, the mem-

bership of the Cow Creek Band of Umpqua Tribe of Indians shall consist of all persons listed on such roll.

"(b) Within three hundred and sixty-five days after the enactment of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987, the Secretary shall prepare in accordance with the regulations contained in part 61 of title 25 of the Code of Federal Regulations a tribal membership roll of the Cow Creek Band of Umpqua Tribe of Indians. Such roll shall include all Indian individuals who were not members of any other federally recognized Indian tribe on July 30, 1987 and who—

"(1) are listed on the tribal roll referred to in subsection (a);

"(2) are the descendants of any individuals listed pursuant to paragraph (1) born on or prior to enactment of this Act; or

"(3)(A) are the descendants of any individual considered to be a member of the Cow Creek Band of Umpqua Tribe of Indians for the purposes of the treaty entered between such Band and the United States on September 18, 1853; (B) have applied to the Secretary for inclusion in the roll pursuant to subsection (c); and (C) meet the requirements for membership provided in the tribe's governing documents.

"(c) The Secretary shall devise regulations governing the application process under which individuals may apply to have their names placed on the tribal roll pursuant to paragraph 3 of subsection (b).

"(d) After publication of the roll in the Federal Register, the membership of the tribe shall be limited to the persons listed on such roll and their descendants: Provided, That the tribe, at its discretion, may subsequently grant tribal membership to any individual of Cow Creek Band of Umpqua ancestry who pursuant to tribal procedures, has applied for membership in the tribe and has been determined by the tribe to meet the tribal requirements for membership in the tribe: Provided further, That nothing in this Act shall be interpreted as restricting the tribe's power to impose additional requirements for future membership in the tribe upon the adoption of a new constitution or amendments thereto as provided in section 7 of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987.".

(b) TECHNICAL CORRECTION.—The Cow Creek Band of Umpqua Tribe of Indians Recognition Act is amended by striking out "Umpqua Tribe of Oregon" each place it appears and inserting in lieu thereof "Umpqua Tribe of Indians".

SEC. 6. ELIGIBILITY OF NONTRIBAL MEMBERS.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, any individual who is not a tribal member shall be eligible to participate—

(1) in the programs established under subsection (c) and (d) of section 4 of this Act if such individual—

(A) submits to the Secretary and to the tribe an application for participation in such programs which is accompanied by evidence establishing that such individual is within the group of persons described in section 4(a) of Public Law 96-251; and

(B) is certified by the Secretary as being within such group; and

(2) in the program established under subsection (b) of section 4 of this Act if such individual—

(A) submits to the Secretary and to the tribe, by no later than one hundred and eighty days after the date of enactment of this Act, an application for participation in such program which is accompanied by evidence establishing that such individual is within the group of persons described in section 4(a) of Public Law 96-251; and

(B) is certified by the Secretary as being within such group.

(b) BASIS OF CERTIFICATIONS.—In making certifications under subsection (a) of this section, the Secretary may use—

(1) records collected pursuant to Bureau of Indian Affairs Contract Numbered POOC14207638 that are made available to the Secretary by the tribe; and

(2) any other documents, records, or other evidence that the Secretary determines to be satisfactory.

SEC. 7. ORGANIZATION OF TRIBE; CONSTITUTION, BYLAWS AND GOVERNING BODY.

(a) IN GENERAL.—Section 4 of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712b) is amended to read as follows:

"SEC. 4. (a) The tribe may organize for its common welfare and adopt an appropriate instrument, in writing, to govern the affairs of the tribe when acting in its governmental capacity. The tribe shall file with the Secretary of the Interior a copy of its organic governing document and any amendments thereto.

"(b) Not less than one year following enactment of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987, the tribe's governing body may propose a new governing document or amendments or revisions to the interim governing document, and the Secretary shall conduct a tribal election as to the adoption of that proposed document within one hundred twenty days from the date it is submitted to the Bureau of Indian Affairs.

"(c) The Secretary shall approve the new governing document if approved by a majority of the tribal voters unless he or she determines that such document is in violation of any laws of the United States.

"(d) Until the tribe adopts and the Secretary approves a new governing document, its interim governing document shall be the tribal bylaws entitled 'By-Laws of Cow Creek Band of Umpqua Tribe of Indians' which bear an 'approved' date of '9-10-78,'.

"(e) Until the tribe adopts a final governing document, the tribe's governing body shall consist of its current board of directors elected at the tribe's annual meeting of August 10, 1986, or such new board members as are selected under election procedures of the interim governing document identified at subsection (d).".

Mr. HATFIELD. Mr. President, I come to the floor to address a lingering controversy through this new legislation, H.R. 1567, the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987. This legislation provides a long-awaited mechanism to guide in the distribution of $1.5 million awarded to the Cow Creek Band of Umpqua Indians by the U.S. Claims Court in 1984. H.R. 1567 has been approved by the House of Representatives and I think the Senate should act accordingly and put an end to yet another unfinished chapter in Cow Creek history.

The Cow Creek Indians have been forced to wait and experience considerable hardship as a result of unfulfilled Government commitments over the past 128 years.

In September 1853, the U.S. Government entered into a treaty giving monetary restitution to the Cow Creek Indians for tribal land that was to be acquired by the U.S. Government the following year. During early settlement of the Oregon Territory, however, animosity grew between the Indian tribes occupying the area, and the settlers. The ensueing struggle left many small tribes, including the Cow Creek, isolated and without compensation due them under the treaty.

During the 1930's, the Cow Creek Indians repeatedly tried to get their fair share of compensation. Their efforts proved to be fruitless, however, when legislation was vetoed in 1932 that would have allowed the Cow Creeks to file a claim against the U.S. Government. But the Cow Creek Indians continued their fight for compensation, and almost 50 years later the Cow Creeks finally won. In 1980, Public Law 96-251, legislation was passed by Congress to enable the Cow Creek Indians to pursue their compensation claim with the U.S. Claims Court.

Four years later, the Cow Creek Indians were awarded a judgment of $1.5 million as the result of a settlement reached with the U.S. Government. However, before this settlement could be of help to the Cow Creeks, however, a distribution plan had to be designed and approved by Congress or the Secretary of the Interior. The plan had to be structured in a fashion that emphasized the importance of the long-term interests of the tribe and its members.

Mr. President, the bill before the Senate today represents the concerted effort of the Cow Creek people to craft a fair and equitable distribution plan.

This legislation takes into account the lessons learned from the failed per capita distribution plans of the past. For many tribes, unfortunately, the per capita distribution plans implemented by tribes and the Bureau of Indian Affairs in the past have failed to serve the general well-being and common interest of the tribes. Greed and selfishness among tribal members has led to the quick evaporation of the much needed but poorly distributed funds. Now, years after the plans were implemented, the affected tribes are still struggling with financial and social problems that a more thoughtful distribution plan might have helped to alleviate.

Specifically, H.R. 1567 divides the $1.5 million principal into four separate accounts. The interest on these accounts will provide support to the tribe in the areas of housing, economic development, elderly assistance, and higher and vocational education. These programs will go far in bringing help to those loyal Cow Creeks who have struggled through many genera-

tions. This plan will allow the tribe to take important steps toward economic and social prosperity by assisting its members competing in the sluggish economy of my home State.

Mr. President, in addition to establishing a distribution plan, H.R. 1567 also resolves a dispute that has arisen regarding the membership of the tribe. This dispute has paralyzed the operations of the tribe for many years and has otherwise thwarted the implementation of the judgment distribution scheme.

The dispute goes back to 1982, shortly after the Cow Creek Tribe received Federal recognition with enactment of Public Law 97-251. In that legislation, Congress stated that the membership of the tribe was to consist of all the individuals and their descendants listed on the tribal roll at the time of enactment of the act. Although a membership roll was a part of the record before the House and Senate committees reviewing the issue, the Bureau of Indian Affairs, without consulting the Congress, determined that Congress did not intend to recognize the tribe with a membership consisting of the individuals on that roll. So the Bureau of Indian Affairs, for all practical purposes, administratively terminated the tribe.

This legislation before us restates the intent of Congress on this issue. I believe H.R. 1567 will enable all Cow Creek descendants to participate in the distribution of the judgment. It will provide long-term benefits to the tribe and its members. It will resolve the questions over membership which have suppressed the tribe's advancement. Mr. President, this legislation will enhance the quality of life for all tribal members now and in the future. I urge its immediate adoption in the Senate.

Mr. PACKWOOD. Mr. President, I am pleased that the bill before us has reached the Senate floor. It has taken over 130 years for the Cow Creek Band of the Umpqua Tribe of Indians to receive their just compensation for land they ceded to the U.S. Government. This bill will end their years of waiting.

My colleagues may ask why it has taken so long for this tribe to be awarded compensation. Let me briefly explain its history.

The Cow Creek Band of the Umpqua Tribe of Indians was an aboriginal tribe in southwestern Oregon, in what is now Douglas County. With the rush of settlers into the Oregon Territory and the discovery of gold in the Umpqua Valley, the Government and the tribe signed a treaty in 1853 whereby the Cow Creeks agreed to cede their land in exchange for goods, other land, services, and annuities. This agreement was ratified by the U.S. Senate on April 12, 1854.

However, the Cow Creeks were destined to never receive that compensation. In 1855, war broke out in the region between the natives and the settlers. Caught up in the conflict, many of the Cow Creeks fled into the neighboring hills. However, the tribe was not completely wiped out by this conflict and those who remained in the area continued to consider themselves Cow Creeks.

Not until 1980 did the Cow Creeks see hope of receiving compensation. Congress passed legislation allowing the tribe to file a claim with the U.S. Court of Claims. It took 4 years before an agreement was reached, and on June 12, 1984, the tribe was awarded $1.5 million.

The bill before the Senate, H.R. 3214, is a distribution plan for this money. Mr. President, it is a good plan supported by the tribe. The principle will be placed in a trust fund, the interest from which will be used to pay for various tribal programs and expenses. These programs include: elderly assistance, higher education and vocational training, housing assistance, and economic development.

Mr. President, I believe that the bill before this body will be of long-term benefit to the tribe, and I hope my colleagues will join me in supporting it. The House has passed a bill. It is now time that the Senate act to finalize our obligation to the Cow Creek Band of Umpqua Indians and bring to an end their long wait.

The amendment was agreed to.

The amendment was ordered to be engrossed, the bill was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. QUAYLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BENIGN ESSENTIAL BLEPHAROSPASM AWARENESS WEEK

The joint resolution (H.J. Res. 224) designating the week of October 18, 1987, through October 24, 1987, as "Benign Essential Blepharospasm Awareness Week," was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. QUAYLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

OPPOSITION TO THE THIRD COUNTRY MEAT DIRECTIVE BY THE EUROPEAN COMMUNITY

The concurrent resolution (S. Con. Res. 77) expressing the sense of the Congress in opposition to the third country meat directive by the European Community requiring individual inspection and certification by the European Community of United States meat plants, and urging the President to take strong countermeasures should the European Community deny United States meat imports because of the unfair application of the directive, was considered and agreed to.

The preamble was agreed to.

The concurrent resolution, and the preamble, are as follows:

Whereas the third country meat directive by the European Community requiring individual inspection and certification by the European Community of United States meat plants would damage a $130,000,000 United States export market:

Whereas this directive would reduce prices and income to the United States livestock producers;

Whereas this directive would reduce employment in the United States meat packing industry;

Whereas this directive would create a trade barrier in violation of the general agreement on tariffs and trade;

Whereas the terms of the directive would not apply to intracountry meat trade within all European Community member states;

Whereas there are no established enforcement mechanisms for the directive within the European Community;

Whereas the requirements of the directive are not based solely upon specific scientific research and evidence;

Whereas this directive will not result in more wholesome meat being made available to European consumers;

Whereas the United States has strongly opposed the establishment of trade barriers under the guise of hygiene and sanitation requirements;

Whereas the United States has maintained the position that any attempt by the European Community to impose unfair health requirements on United States meat imports would invite strong and immediate countermeasures: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that—

(1) the administration should vigorously oppose the implementation of the directive by the European Community which will limit United States access to European Community agricultural markets;

(2) if the European Community denies United States meat imports based on scientifically unsubstantiated standards or standards which are not applied to intracountry trade within all European Community member states, the Administration should adopt strong and immediate countermeasures; and

(3) the administration should communicate to the European Community the message that the United States views the directive as inconsistent with the European Community's obligations under the general agreement on tariffs and trade.

SEC. 2. The Secretary of the senate shall transmit copies of this resolution to the President, the Secretary of State, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of the Treasury, the United States Trade Representative, the head of the Delegation of the European Community to the United States, and the Ambassadors to the United States for each of the member states of the European Community.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. QUAYLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EMERGENCY MEDICAL SERVICES WEEK

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of Senate Joint Resolution 148 and House Joint Resolution 134, to designate the week of September 20, 1987, through September 25, 1987, as Emergency Medical Services Week.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Joint Resolution 134.

The PRESIDING OFFICER. The joint resolution will be stated by title.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 134), designating the week of September 20, 1987, through September 26, 1987, as Emergency Medical Services Week.

The PRESIDING OFFICER. Is there objection to the present consideration of the joint resolution?

There being no objection, the joint resolution was considered, ordered for a third reading, read the third time, and passed.

The preamble was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. QUAYLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I ask unanimous consent that further action on Senate Joint Resolution 148 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR H.R. 3289 TO BE PLACED ON THE CALENDAR

Mr. BYRD. Mr. President, I ask unanimous consent that H.R. 3289, to amend the Export-Import Bank Act, be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

JURISDICTION OVER ISSUES IN H.R. 3, OMNIBUS TRADE BILL, IN CONFERENCE

Mr. BYRD. Mr. President, I ask unanimous consent that in the conference on H.R. 3, the omnibus trade bill, Senators CRANSTON and GRAMM have jurisdiction over all issues within title X.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I thank the able acting Republican leader, Mr. QUAYLE.

ORDERS FOR TUESDAY, SEPTEMBER 22, 1987

WAIVER OF CALENDAR CALL

Mr. BYRD. Mr. President, I ask unanimous consent that on Tuesday the call of the calendar be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

MOTIONS AND RESOLUTIONS

Mr. BYRD. Mr. President, I ask unanimous consent that on Tuesday next the motions and resolutions over under the rule not come over.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, may I ask the distinguished acting leader on the other side if he has any further statement or business to bring before the Senate.

Mr. QUAYLE. Mr. President, I tell the distinguished majority leader we have none, and I bid him farewell over the weekend and we will see him bright and early as we will see all of our colleagues on Tuesday morning ready to go at it again.

Mr. BYRD. I thank the able Senator, and I want to say it is a pleasure to work with him. I reciprocate in wishing him and all his loved ones a good weekend.

Mr. President, it has been called to my attention by our able Secretary to the Majority that I should mention Rosh Hashanah. Rosh Hashanah begins as of sundown on Wednesday next and continues until sundown on Thursday next.

Now, there will be no rollcall votes after sundown on Wednesday. Any rollcall votes that may be ordered after that hour, namely 6 o'clock or thereabouts, will be laid over until 6 p.m., on Thursday. Any rollcall votes ordered on Thursday will not occur until the hour of sundown circa 6 p.m., that day, Thursday.

Mr. QUAYLE. Will the majority leader yield?

Mr. BYRD. Yes.

Mr. QUAYLE. It is the desire, though, of the majority leader at least to work probably into the evening Wednesday and certainly to work Thursday but no rollcall votes; is that correct? So Senators would be on alert that if they had maybe noncontroversial amendments or even amendments that might want to be offered or maybe stack votes, that that would be the desire of the majority leader?

Mr. BYRD. Yes, the Senator is preeminently correct.

It is not the intention to go out on Thursday or to go out on Wednesday after 6 p.m. The Senate has so much work to do. We will continue to work. So no rollcall votes will occur after 6 p.m. on Wednesday or prior to 6 p.m. on Thursday.

Mr. President, I thank the distinguished Senator.

I am now going to make a brief statement.

EXTENSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that morning business be extended for 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

A WELL-DESERVED RECOGNITION FOR THE SECRETARY OF THE SENATE

Mr. BYRD. Mr. President, unchallengeably, one of those individuals most responsible for the smooth, efficient, and dependable functioning of the U.S. Senate is Mr. Walter J. "Joe" Stewart. Again and again, in their contact with Mr. Stewart, or in their participation in some event or service for which he is the coordinator, Senators, and other knowledgeable people comment on the remarkable work that Joe Stewart does as Secretary of the Senate. Indeed, we are fortunate to have at our command the talents, skills, brilliance, and loyalty of this outstanding man.

I know, then, that all of the Senators and the staff members of the Senate join me in congratulating Joe Stewart for a deserved honor that has come to him.

Last night, at an appropriate ceremony held at the Columbia Country Club in Chevy Chase, MD, Walter J. Stewart was officially named the fourth distinguished fellow of the John Sherman Myers Society, at the unanimous recommendation of the development committee of the Washington College of Law of the American University.

This honor is but the most recent confirmation of the achievements and abilities of a singularly accomplished and gifted man.

Interestingly, however, from his entrance into Capitol Hill circles, Joe Stewart's career has been marked by promise, and by a step-by-step fulfillment of that promise.

In 1951, Joe Stewart came to Washington from his home in Jacksonville,

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FL, as a Senate page under the sponsorship of the late Senator Spessard Holland of Florida. As president of his class, Joe graduated from the Capitol Page School in 1953.

Thereafter, while earning his undergraduate degree at George Washington University and his LL.B. at the American University, Joe continued to serve in various Senate positions. Those included, at the age of 23, an Assistant to the Secretary for the majority, one of the youngest individuals in Senate history to serve in that capacity.

Significantly, Joe was awarded his juris doctor in June of 1963.

Incidentally, I received my LL.B. degree in June 1963, but I was not the same age of Joe Stewart. I happened to be 45 years old on that occasion. He was much younger.

The commencement speaker for that ceremony was the late President John F. Kennedy, who made mention of having worked with Joe during his own days as a Member of the Senate.

Upon his graduation from law school, and his admission to the District of Columbia Bar, Joe was named counsel to the Senate Committee on Appropriations. He remained in that position until 1971, when he became my chief legislative asssistant while I was serving as Senate Democratic Whip.

I should mention also that Joe Stewart worked on my appropriations staff for a while.

In 1977, when I was elected Senate majority leader for the first time, I asked Joe Stewart to serve as my administrative assistant for Senate floor operations.

In 1979, Joe was elected secretary for the majority and served in that role until January 1981, when he was elected secretary for the minority.

On January 6, 1987, after serving several years as the vice president for Government affairs of Southern Natural Resources, Inc., Joe returned to his Senate home upon being elected Secretary of the Senate for the 100th Congress. In that position, he is one of the paramount authorities of the Congress, serving as the Senate's principal administrative and financial officer. Under his jurisdiction are the Parliamentarian, the legislative clerk, the Journal clerk, the bill clerk, and the official reporters of debates. In addition, Joe Stewart holds ultimate responsibility for the Office of Printing Services, the Senate Historical Office, the Curator's Office, the Office of Classified National Security Information, the Senate Library, the document room, and the stationery room.

I had wanted to attend last night's dinner in Chevy Chase, and I especially regret that I could not attend that dinner, but I know that Joe Stewart will understand our current legislative schedule and he will understand that that presented me with a dilemma in which I had to be here rather than at the ceremonies honoring a good friend.

Certainly, the Washington College of Law of the American University has my endorsement of the action taken last evening in bestowing a singular distinction on Joe Stewart.

In the long history of the U.S. Senate, few nonmembers have contributed as significantly to this unique institution as has our current Secretary of the Senate.

Again, I congratulate Joe Stewart on receiving a great honor, and, for all of our colleagues, I thank him for his incomparable efforts in fulfilling his duties to this institution and its Members.

THANKS TO SENATORS AND STAFF

Mr. BYRD. Mr. President, I thank all Senators and all of the officers of the Senate and the fine floor staffs, Republican staff and Democratic staff, all the pages, reporters, security officers, and doorkeepers. I hope everyone will have a good weekend.

PROGRAM

Mr. BYRD. Mr. President, I will restate the program for Tuesday.

Mr. President, the Senate will adjourn at the close of business today and it will come back in on Tuesday next at 8 a.m. After the two leaders have been recognized under the standing order, there will be a period for the transaction of morning business not to extend beyond 8:30 a.m.

Mr. President, at the conclusion of morning business, circa 8:30 a.m. the unfinished business will be laid before the Senate at which time I will suggest the absence of a quorum. There will be a live quorum, and I will move to instruct the Sergeant at Arms to request the attendance of absent Senators. That rollcall vote being that early, I will have that vote last 30 minutes. It will be a 30-minute rollcall. So that the rollcall should be completed circa 9 a.m.

And several amendments are in the wings. Time agreements have been entered on several amendments. As Mr. NUNN stated earlier, I believe he expected Mr. JOHNSTON to lay down an amendment. But in any event Tuesday will be a day of good debate and some rollcall votes. There is no doubt but that the Senate will be in late Tuesday. I think we have to keep in mind that the debt limit will expire at midnight on Wednesday; a week Wednesday next. And the conferees, I believe, have reported or prepared to report back on the conference actions.

I understand that there is enough cash on hand to carry the Government beyond Wednesday night midnight so that it will be absolutely imperative that we adopt the conference report. But, Mr. President, next week at some point the Senate I think should take up that conference report. And that is not under any time limitation. That will contain the "Gramm-Rudman-Hollings fix" so-called.

So certainly within the next few days and before the 29 or 30 of the month both Houses will of necessity have to adopt the conference report, and have it on the President's desk. That means we will have very busy days on Tuesday, Wednesday, Thursday, Friday, and I would not be surprised if we would have to have a Saturday session next week. If we have to have a Saturday session, it would be because of the necessity for completing action on the DOD authorization bill or action on the debt limit extension, or some other pressing matter. By all means, Senators should not expect to get out early next Friday.

Today I think has been a well-deserved workday with our managers having done a good job and the Senate having worked well. There has been good debate, and action on important amendments.

ADJOURNMENT UNTIL 8 A.M., TUESDAY, SEPTEMBER 22, 1987

Mr. BYRD. Mr. President, I move, in accordance with the previous order, that the Senate stand in adjournment until the hour of 8 a.m., Tuesday next.

The motion was agreed to and, at 6:46 p.m., the Senate adjourned until Tuesday, September 22, 1987, at 8 a.m.

NOMINATIONS

Executive nominations received by the Senate September 18, 1987:

THE JUDICIARY

EDWARD F. HARRINGTON, OF MASSACHUSETTS, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS VICE ANDREW A. CAFFREY, RETIRED.

DEPARTMENT OF DEFENSE

THE FOLLOWING-NAMED OFFICER FOR REAPPOINTMENT AS CHAIRMAN OF THE JOINT CHIEFS OF STAFF UNDER TITLE 10, UNITED STATES CODE, SECTION 152: ADM. WILLIAM J. CROWE, JR., xxx-xx-xxxx U.S. NAVY.